Before Mukul Mudgal, C.J. & Ajay Tewari J.

BHAKRA BEAS MANAGEMENT BOARD,—*Appellant*

versus

P.O. CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL & OTHERS,—*Respondents*

LPA No. 221 of 2006 in
CWP No. 1987 of 1985

8th September, 2010

Constitution of India, 1950—Art.226—Work charged employees performing duties on technical jobs—Claim for revision of pay scales—Industrial dispute—Tribunal granting revision of pay scales—Single Judge upholding awards of Tribunal—Difference in service conditions between work charged and regular employees—Work charged employees lacking essential educational qualifications—No inherent infirmity in prescribing different scales of pay for regular and work charged staff—Appeals allowed, judgments of Single Judge and Tribunal set aside, however, directing appellant not to recover payments already made to workmen.

Held, that letter dated 28th May, 1970, which relates to implementation of the Punjab Pay Commission's framing of revised pay scales of the 'left over' categories of Ex-cadre posts by the B.B.M.B., by itself would not *ex-facie* be held to be applicable. A perusal of the said letter does indeed tend to corroborate the interpretation sought to be put by the appellant that the said letter applied only to the regular staff of the appellant and not to the work charged staff. As regards the statement of MW1, the said admission, which could at best be his own opinion, the same cannot be held to be conclusive evidence of the alleged parity. Further, neither the Tribunal nor the learned Single Judge has considered the differences in the service conditions between the work charged staff and the regular staff. In view of these differing service conditions it must be held that there can be no inherent infirmity in prescribing different scales of pay for regular staff and work charged staff.

(Para 7)

D.S. Nehra, Sr. Advocate with N.S. Bawa, Advocate, *for the appellant.*

R.S. Bains, Advocate, *for the respondent(s)*

AJAY TEWARI, J.

(1) This order shall decide L.P.A. Nos. 221, 224 and 225 of 2006, as they arise from the common judgment of this Court dated 5th July, 2006. For the sake of convenience, facts are being taken from L.P.A. No. 221 of 2006.

(2) Brief facts are that the workmen of Bhakra Beas Management Board, who belong to the categories of Fitters/Assistant Foreman Special (work-charge) and perform duties on technical jobs of highly skilled and intricate nature, dis-satisfied with their pay scales raised an industrial dispute praying to revise and fix their respective pay scales. The appropriate government referred the said disputes to the Presiding Officer, Central Government Industrial Tribunal, Chandigarh for adjudication. The plea of the management before the Tribunal was that the Fitters working in the BBMB are deployed on different jobs/classification/trade and pay scales to the said workmen have been given in accordance with the tenor of duties/ jobs entrusted to them. The management further took a plea that the workmen concerned were fixed in the revised pay scale of Rs. 110-180 after obtaining their options, in accordance with the rules applicable in that regard.

(3) The Tribunal,—*vide* separate awards dated 29th August, 1984, held that even though the Management was justified in declining to equate the workmen with the Foreman Special (Selection Grade) carrying a scale of Rs. 400–650, yet it had no logic in denying them the time scale of Rs. 300–500. However, during the course of hearing, it was brought to the notice of the Tribunal that there was another revision of pay scale with effect from 1st January, 1978 and resultantly, the management was directed to fix the workmen in the pay scale of Rs. 300–500 with effect from 1st February, 1968 and re-fix them in the new corresponding scale granted with effect from 1st January, 1978 but the claim of back wages was restricted up to 31st December, 1977.

(4) Dis-satisfied with the Award, the management filed with petitions before this Court. This Court,—*vide* a common judgment dated 5th July, 2006, upheld the awards of the Tribunal, Hence these appeals.

(5) Learned Senior Advocate appearing on behalf of the appellant has argued that the Tribunal as well as the learned Single Judge have erred in mechanically equating the work charged establishment with the regular establishment. He has further argued that the post with which equation was sought was in any case a promotional post and, thus, could have no parity with the posts occupied by the respondents. As evidence of the inherent difference between the work charged establishment and regular establishment, the following has been pointed out :—

"(i) Regular workmen are retired at the age of 58 years whereas the work charge personnel are retired at the age of 60 years.

(ii) Work-charged personnel are getting EPF benefits whereas the regular employees are not getting the same.

(iii) Work-charged personnel are getting ex-gratia and gratuity on the basis of pay +DA, whereas the regular employees do not get them on the same basis. They are paid gratuity only on the basis which becomes half of the amount which work-charged employees get having put in equal number of years of service.

(iv) Work-charged employees are getting overtime at double the rate of pay, whereas regular employees do not get it at all according to the terms and conditions of their service.

(v) Promotion avenues in work-charged cadre are open and vast and a simple Trademan can easily aspire for promotion as Foreman Special (Selection Grade) whereas, in the regular cadre, there is no such scope."

(6) Learned counsel for the respondents, on the other hand, has vehemently urged that the letter dated 28th May, 1970, Ex. W10, concludes the issue since by that letter the appellant had itself accepted the claim of the workmen. As per his argument, in view of this unequivocal position, the questions raised by counsel for the appellant do not arise. He has also relied upon the evidence of MW1 who had statedly admitted the case of the respondents.

(7) To deal with the arguments raised by counsel for the respondents first, we have perused the letter dated 28th May, 1970 which relates to implementation of the Punjab Pay Commission's framing of revised pay scales of the 'left over' categories of Ex-cadre posts by the B.B.M.B.

In our considered opinion, this letter by itself would not *ex-facie* be held to be applicable. As per the learned counsel for the appellant, the said letter related only to the regular staff. A perusal of the same does indeed tend to corroborate the interpretation sought to be put by learned counsel for the appellant that the said letter applied only to the regular staff of the appellant and not to the work charged staff. As regards the statement of MW1, the said admission, which could at best be his own opinion, the same cannot be held to be conclusive evidence of the alleged parity. Further, we find that neither the Tribunal nor the learned Single Judge has considered the differences in the service conditions between the work charged staff and the regular staff, as enumerated above. In our opinion, in view of these differing service conditions it must be held that there can be no inherent infirmity in prescribing different scales of pay for regular staff and work charged staff. Additionally, in paragraph 2 of the written statement to the claim application, it has been mentioned as follows :—

> "2. Para 2 is admitted to the extent that the workcharged Asstt. Foreman Special were initially working as machines, Fitters, Electricians, Welders, Chargemen, Chargemen Special during the construction of Bhakra Dam. They were latter promoted as Asstt. Foreman Special notwithstanding the fact that none of them was technically qualified and majority of them were under Matric hardly middle pass."

(8) In the replication thereto, the respondents have mentioned as follows :—

> "2. The written statement of the Management is admitted to the extent that the Assistant Foreman Spl's arisen from the various lower category due to their good work. Rest of para is irrelevant."

(9) Thus, the respondents did not deny that they lacked the essential educational qualifications.

(10) In **State of Rajasthan** *versus* **Kunji Raman, (1)** the Hon'ble Supreme Court held as follows :—

> "8. A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and

(1) AIR 1997 S.C. 693

continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of funds for executing it. So far as employees engaged on work-charged establishments are concerned not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. **A regular establishment and a work-charged establishment are two separate types of establishment and the persons employed on those establishments thus form two separate and distinct classes.** For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the government. It is well-settled that the Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court." (Emphasis supplied)

(11) In view of the reasons set out above, and the principles of law set out by the Hon'ble Supreme Court, this appeal as well as the connected appeals are allowed, the judgments of the learned Single Judge and that of the Tribunal are set aside and the claim of the respondents is dismissed. There shall be no order as to costs.

(12) We are informed that payments have already been made to the workmen under the impugned awards. In the circumstances, even while clarifying the position of law, it is directed that payments already made would not be recovered from the workmen. However, any other consequential benefits would, ofcourse be denied to them, in terms of this judgment.

R.N.R.