



2025:DHC:7095-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 06.08.2025***Judgment delivered on: 21.08.2025***

+ LPA 1254/2007

GOVT. OF NCT OF DELHI

.....Appellant

Through: Ms. Latika Choudhary,
Advocate

versus

ANIL KUMAR & ORS

.....Respondents

Through: Mr. M.K. Bhardwaj, Advocate
through video conferencing**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****JUDGEMENT****HARISH VAIDYANATHAN SHANKAR J.**

1. The present appeal, filed under Clauses 10 and 14 of the Letters Patent, challenges the **judgment dated 31.05.2007**¹ passed in **W.P.(C) No. 6029/2002** titled "*Sh. Anil Kumar & Ors. v. Govt. of NCT of Delhi & Ors.*". This said judgment was a common one, also deciding **W.P.(C) 4051/2002** titled "*Deep Chand & Ors. v. Govt. of NCT of Delhi & Ors.*".

2. Against the Impugned Judgment, two separate Letters Patent Appeals were filed, viz., LPA 1253/2007 and LPA 1254/2007, the latter being the present appeal.

3. It is relevant to note at the outset that LPA 1253/2007, filed in respect of W.P.(C) 4051/2002, was disposed of by this Court *vide*

¹ Impugned Judgement



order dated 23.09.2016, which recorded the following:-

“LPA No. 1253/2007

Learned counsel for the respondents has stated that the respondents would not rely upon the impugned judgment passed by the single Judge to claim any relief as the respondents were promoted as Junior Engineers in the pay scale of Rs.5000-8000 in June, 1996. In other words, the respondents state that they would forego their claim for the higher pay scale of Rs.5000-8000 from January, 1996 till June, 1996. The statement made by the counsel for the respondents is taken on record.

In view of the statement made by the learned counsel for the respondents, counsel for the appellant states that he would not press the present appeal. Accordingly, the appeal is disposed of. We clarify that this Court has not expressed any opinion on merits and in case a similar issue arises, it will be open to the appellant to challenge and question the submissions made by the writ petitioner/employee on merits.

LPA No. 1254/2007

List on 11th November, 2016.”

4. In the present appeal, the Appellant challenges that part of the impugned judgment relating to W.P.(C) 6029/2002, whereby the Court restored the revised pay scale of the Respondents (“**Employees**”) as granted by order dated 26.04.2002, and directed payment of arrears based on the said revised pay scale.

CONTENTIONS OF THE APPELLANT:

5. Shorn of unnecessary details, the limited contentions advanced by the Appellant are that Respondent No. 6/**Delhi Energy Development Agency**², being an autonomous body under the Appellant, lacked the authority to unilaterally upgrade the pay scales of its employees. It is the Appellant’s case that such unauthorized upgradation necessitated the issuance of the order dated 21.06.2002, which cancelled, with retrospective effect, the earlier order dated 26.04.2002 revising the respondents’ pay scales.

² DEDA



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6. Learned counsel for the Appellant would contend that the pay scale of Rs. 4,000-6,000/- was not the scale to which the employees were entitled, as they had been redeployed, and the order of redeployment stipulated that they would not be entitled to the higher pay scale. It would further be submitted that the employees were only entitled to protection of their existing pay scale, which was at the level of Rs. 3,050-4,590/-.

7. Learned counsel for the Appellant would further contend that the three other personnel who continued to receive a higher pay scale did so by virtue of their continued service with DEDA, unlike the employees herein, who had been redeployed.

CONTENTIONS OF THE EMPLOYEES:

8. *Per contra*, learned counsel for the Employees would place reliance on the seniority list and submit that the individuals who were drawing a higher pay scale are, in fact, junior to the employees therein. It would be contended that such an anomaly cannot be countenanced as it militates against the fundamental principles of service law.

9. It would be further submitted that allowing such disparity to continue would result in the perpetuation of a disadvantage to the employees, not only in terms of arrears of pay but also with respect to pensionary benefits accruing thereafter.

ANALYSIS:

10. We have heard learned counsel for the parties at length and have perused the Impugned Judgment as well as the records placed before us.



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11. The relevant portion of the impugned Judgment herein is as follows:-

“I have heard the learned Counsel appearing for the parties at length. Dr. Surat Singh, Counsel appearing for the petitioners has contended that by withdrawing or by cancelling the said revision in pay scales of the petitioners, the respondents have acted in a most discriminatory manner and in utter violation of the fundamental rights of the petitioners. Counsel also contended that juniors in service to the petitioners in the seniority list were already getting the revised pay scales but as regards the petitioners the grant of revised pay scales has been withdrawn vide order dated 21.6.2002 Counsel for the petitioner has also drawn my attention to the office order dated 1.12.2000 passed by respondent No. 2, i.e, DEDA whereby the pay scales of three electricians were revised from 3050-75-3950-80-4590 to Rs. 4000-100-6000 w.e.f 1.1.1996 The Counsel has submitted that these three electricians, who are junior to the petitioners, joined later on and, thus, the decision of the revision of pay scales of the juniors and withdrawal of the revision of pay scales of the petitioners by the respondent is arbitrary, illegal and discriminatory in nature. Counsel for the petitioners in WP(C) No. 6029/2002 has also placed reliance on the seniority list dated 22.1.1997 to show that the petitioners are senior to other electricians in respect of whom the revision of pay scales have been directed w.e.f. 1.1.1996 vide order dated 1.12.2000. Mr. V.K Shali Counsel appearing for respondent No. 1 took a stand that the order of revision of the pay scales issued by respondent No. 2.DEDA in the month of April, 2002, when the petitioners were yet to be directed for redeployment in various departments of the Government of NCT of Delhi and the redeployment order dated 6.6.2002 was issued by the services Department of Government of NCT of Delhi by just protecting the pay scales of the petitioners without effecting any revision in the pay scales. The contention of Counsel for respondent No. 2 is that the competent authority of the Government of NCT of Delhi took a decision to roll back the pay scales of the petitioners without effecting any kind of revision in pay scales and while doing this the pay of the petitioners was duly protected without causing any financial loss to them and, thus, as per Counsel for the respondent the order passed by the respondent No. 2 withdrawing the revision in pay scales is neither illegal or arbitrary nor such order can be termed as discriminatory in nature. Without taking any plea in the counter affidavit, the respondents also tried to justify the action of the respondent by saying that the order dated 21.4.2002 for grant of revision in pay scale, in fact, was passed by mistake and, therefore, the petitioners cannot take any undue advantage of the mistake committed by the



said Agency of the Government. When asked to substantiate such a plea with the help of any assertion in the counter affidavit or by some document, the plea of the Counsel for the respondents was that the redeployment order dated 6.6.2002 itself postulates such a position otherwise the revised pay scales could have been protected in the redeployment order itself.

I do not find any logic or rational in such submissions made by Counsel appearing for the respondents. Although the Government cannot claim an immunity from committing error and mistakes but if such mistake stands committed at any stage, then, the Government has to take a categorical stand explaining under what circumstances such mistake was committed and while withdrawing such mistake necessary background has to be spelt out. Once the Government has taken a decision to revise the pay scales of the petitioners that too in accordance with the recommendations of the 5th Pay Commission, an expert body, the Government cannot turn around to say that such decision was taken by mistake.

By taking such a decision, the Government has granted financial advantage to the petitioners and if such an advantage is required to be withdrawn due to any policy decision of the Government then the petitioner who were the beneficiaries of the financial gain have at least to be informed as under what circumstances the same is being withdrawn, be it on account of change in the policy decision or be it on account of some earlier mistake or for any other just cause. The beneficiaries have a right to know about the reasons for withdrawal and cancellation of such benefits. In the impugned orders dated 21.6.2002 no such reasons have been given and it merely states that the earlier office orders dated 26.4.2002 whereby the pay scales of five electricians in WP(C) No. 6029/2002 and three Work Assistants (Civil) in WP(C) No. 4051/2002 were revised stood cancelled with retrospective effect w.e.f 25.4.2002 Even the order dated 6.6.2002 is silent about the pay revision as in this order itself the Government could have cancelled the earlier pay revision by spelling out some justified reasons for such withdrawal. I also do not agree with the arguments of Counsel appearing for the respondents that since the petitioners are redeployed on humanitarian grounds, therefore, they are not entitled for revision in the pay scales and it was enough that their pay scales was duly protected.

The petitioners of W.P(C) No. 4051/2002 have also challenged the decision of the respondent whereby the petitioners were re-deployed on a non-technical post of Grade-IV from the earlier position of Work Assistant (C) which was a technical post. Counsel for the petitioner contended that equivalent posts of Work Assistant were available to the respondent but still the petitioner was placed on a lower post in a most illegal and arbitrary manner. Counsel for the respondent, on the other hand, submitted that the



surplus staff of Delhi Energy Development Agency was re-deployed in any of the then available post on humanitarian grounds, and, therefore, the petitioners cannot claim their placement on the equivalent post on their being re-deployed in the available post. Counsel for the respondent also placed reliance on CCS (Redeployment of Surplus Staff) Rules, 1990 to contend that under the said rules, an employee can be re-deployed to a lower rung but the pay scale of such incumbent shall remain protected.

In the counter affidavit filed by respondent No. 1, the stand has been taken by the respondent that surplus employee would be re-deployed to a lower rung in the event of similar post not being available but the pay scale of such incumbents shall be protected. In the present case, the petitioners have not only been placed to the lower rung from the post of Work Assistant to the post of Grade-IV (DASS)/LDC at various posts in Government of NCT of Delhi but their pay scale have also been reduced from Rs. 4,000-6,000 to Rs. 3,050-4,590 as is borne out from the said order dated 6.6.2002. This act of the respondent in lowering down the scale of these petitioners from Rs. 4,000-6,000 to Rs. 3,050-4,590 is apparently illegal and in violation of CCS (Redeployment of Surplus Staff) Rules, 1990 and their own stand taken in their respective counter affidavits stating that no financial loss has been caused to these petitioners and their pay scales have been duly protected. The revised pay scale of Rs. 4,000-6,000 granted in favour of the petitioners vide order dated 26.4.2002 was required to be protected by the respondents in terms of the said CCS Rules relied upon by the respondents, and, therefore, order dated 6.6.2002 whereby the pay scale of the petitioners has been reduced from Rs. 4,000-6,000 to Rs. 3,050-4,590 is ex facie illegal.

Based on the above discussion, both the writ petitions are allowed. The office order dated 21.6.2002 is hereby quashed in both the writ petitions. The respondents are directed to restore the pay scale of the petitioners as granted to them vide order dated 26.4.2002 and all arrears be paid to the petitioners after taking into consideration, the said revised pay scale. In W.P(C) No. 4051/2002, the order dated 6.6.2002 is also quashed to the extent of lowering down the scale of the petitioners from Rs. 4,000-6,000 to Rs. 3,050-4,590 and the respondents are directed to restore the revised pay scale of the petitioners as revised by order dated 26.4.2002

With these directions, the writ petitions are disposed of.”

12. We find no infirmity in the Impugned Judgment. While we concur with the other findings of the learned Single Judge, we would like to add that the order dated 26.04.2002, by which the revision of



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the pay scale of the employees was implemented, was, in fact, in accordance with the recommendations of the 5th Pay Commission. This revision, carried out on the basis of these recommendations, was sought to be taken away on the strength of the redeployment order dated 06.06.2002 and apparently on the ground that there was an error on the part of DEDA due to their alleged non-competence to grant a revision in the pay scales.

13. It is also imperative to mention that the revision in respect of the juniors of the Employees was carried out on 01.12.2000. Thereafter, a clarification was sought from the Deputy Secretary *vide* letter dated 09.07.2001 regarding the revision of the pay scales of the redeployed personnel, *inter alia*, the Respondents/Employees herein, and it was only thereafter, on 26.04.2002, that the pay scales of the Respondents came to be revised.

14. On 06.06.2002, the Employees came to be redeployed and immediately thereafter, the order dated 21.06.2002, which was impugned in the Writ Petition, came to be passed.

15. Upon a reading of the Impugned Judgment, it is apparent that, the Appellant herein sought to wish away the order dated 26.04.2002 as a “mistake”. However, this assertion was neither pleaded in the response to the Writ Petition nor explained in the Appeal. In fact, the pleading that “*the order dated 26.4.2002 granting revisions of pay scale issued by DEDA was passed erroneously*” as apparently it lacked the “*locus standi*”, in our view, constitutes an admission that such an order did come to be passed. This omission led the learned Single Judge to conclude that the Appellant could not take advantage of its own mistakes.



16. The learned Single Judge also observes that there was no justification given by the Appellant in the order by which the said pay scale revision came to be cancelled. Such a bald cancellation, without even a modicum of explanation or even a notice, taking away valuable benefits extended to the Employees, also, to our mind, is unjustified and arbitrary.

17. The Appellant's contention that DEDA lacked authority to revise the pay scale is misplaced, as the Pay Commission's recommendations were to be implemented universally and could not have been withheld from these employees.

18. Moreover, the reliance on the redeployment order and Rule 5(2) of the **CCS (Redeployment of Surplus Staff) Rules, 1990³**, to contend that the employees' pay scale would be protected solely based on the date they were declared surplus is untenable. In fact, Rule 5(1) of CCS Redeployment Rules provides for the contrary, in the following terms:

"5. Determination of placement:

(1)(i) As far as possible, a surplus employee shall, subject to his suitability, be redeployed in a post carrying a pay scale matching his current pay scale.

(ii) For the purpose of clause (i), a matching pay scale shall mean a pay scale the maximum of which is equal to that of the pay scale of the surplus employee, and the minimum of which is not higher than the basic pay (including the stagnation pay) which the surplus employee is in receipt of at the time of making his nomination."

19. A reading of the said Rule 5(1) would make it manifest that the redeployment would have to be carried out based on "... *his current pay scale*". As on the date of redeployment, the Employees had already been extended the benefit of the upward revised pay scale, with retrospective effect. The Appellant's argument that the pay scale

³ CCS Redeployment Rules



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as on the date of their being declared surplus would have to be reckoned for the purpose of determining the pay scale and consequently apply the principle of protecting the pay scale, as on the date of declaration of surplus, is clearly against the express provisions of Rule 5(1), which provides for reckoning of the pay scale on the date of the order of redeployment and not the date of declaration of surplus.

20. Even assuming the order for redeployment is effective from a retrospective date, since the Employees have already undertaken that they would not claim arrears of revised pay, there appears to be no justification for not giving the benefit of the upward pay revision.

21. Having already been given an upward revision of the pay scale on a retrospective basis, as on the date of the redeployment, the Employees cannot be derogated to a position that was less beneficial to them.

22. Further, we are also of the view that the Appellant's argument that the redeployment would relate back to the employees' date of being declared surplus, is unsustainable, as by doing so, the Employees would also be disentitled from the benefits conferred by the 5th Pay Commission recommendations, which had been extended to them prior to the date of redeployment.

23. In our view, once the Pay Commission has recommended a particular benefit, and that benefit has come into effect, it cannot be rescinded merely by invoking an administrative order relating to the redeployment of personnel.

24. Employees cannot be placed in a less favorable position after having been granted the benefits of the 5th Pay Commission. On the



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contrary, under the relevant CCS Redeployment Rules, and given that at the time of the order of redeployment, the employees were entitled to a higher pay scale, such entitlement must necessarily be protected.

25. In view of the aforesaid facts, circumstances, and the prevailing legal position, we find no merit in the present appeal, which is accordingly dismissed.

26. The present appeal, along with pending application(s), if any, is disposed of in the above terms.

27. No order as to costs.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

AUGUST 21, 2025/tk/sm/ds