

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No. 2033/2000**
% **Date of Decision: 15th December, 2009**
MUNICIPAL CORPORATION OF DELHI PETITIONER
! Through: Ms. Amita Gupta, Advocate.
VERSUS
\$ SHRI RAJ PAL & ANR. RESPONDENTS
^ Through: Mr. Anuj Aggarwal for respondent No. 1.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The Municipal Corporation of Delhi, in this writ petition, has prayed for setting aside of an industrial award dated 10.02.1999 (Annexure P-1 at page 7 of the paper book) directing it to grant proper pay scale of the post of Assistant Sanitary Inspector to respondent No. 1 workman w.e.f. 22.06.1987.

2 Briefly stated the facts of the case relevant for the disposal of the present writ petition are that respondent No. 1 had joined the service of the petitioner as daily wagher safaikaramchari on 18.07.1974. He was regularized as safarkaramachari w.e.f. 01.03.1980. In July, 1985 he was promoted to the post of Sanitary Guide. However, on 22.06.1987, he was given current duty charge of the post of Assistant Sanitary Inspector vide office order dated 22.06.1987. At that time, he was holding the substantive post of Sanitary Guide to which he was promoted in July

1985. As the petitioner did not pay him salary of the post of Assistant Sanitary Inspector of which he was given current duty charge w.e.f. 22.06.1987, he had raised an industrial dispute for grant of proper pay scale of the said post w.e.f. 22.06.1987. This dispute raised by him was referred by the appropriate Government in the Government of NCT of Delhi to the industrial tribunal for adjudication. The terms of reference were as follow:-

“Whether Shri Raj Pal is entitled to be regularized as Assistant Sanitary Inspector w.e.f. 22.06.1987 in proper pay scale and if so, to what relief is he entitled and what directions are necessary in this respect?”

3 The industrial tribunal, upon consideration of the evidence produced by the parties before it vide its impugned award dated 10.02.1999, answered the reference in favour of respondent No. 1 workman and directed the petitioner to grant proper pay scale of the post of Assistant Sanitary Inspector to him w.e.f. 22.06.1987 in accordance with the order of his appointment dated 22.06.1987. It is aggrieved by this award of the industrial tribunal, the petitioner has filed this writ petition seeking setting aside of the said award.

4 Ms. Amita Gupta learned counsel appearing on behalf of the petitioner (Municipal Corporation of Delhi) has referred to and relied upon a judgment of the Hon'ble Supreme Court in ***State of Punjab & Ors Vs. Arun Kumar Aggarwal & Ors. 2007 (6) SCALE 593*** to contend that respondent No. 1 workman was not entitled to the pay of post of Assistant Sanitary Inspector for the period he was given current duty charge of the said post. Learned counsel appearing on behalf of the petitioner submits that an employee is not entitled to pay of a higher post merely because he was given a current duty charge of such higher

post for a short period. However, Mr. Anuj Aggarwal learned counsel appearing on behalf of respondent No. 1 workman has relied upon another judgment of Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandiragh Vs. Hari Om Sharma & Ors.*** (Civil Appeal No.5546 of 1995 decided on 29.04.1998) to contend that an employee is entitled to pay of a higher post even if he was holding current duty charge or had officiated on a higher post for temporary period.

5 I have considered the above rival arguments advanced by learned counsel for both the parties and have also gone through the judgments relied upon by them referred above.

6 The judgment of the Hon'ble Supreme Court in Hari Om Sharma's case (Supra) relied upon by counsel for respondent No. 1 workman is not applicable to the facts of the present case. In that case, the Supreme Court has held that any agreement between an employer and employee that if the employee is promoted to the higher post or put to officiate on that post as stop-gap arrangement would not get higher salary or other tentative benefits, is contrary to law and unenforceable in view of Section 23 of the Contract Act, 1872. In Hari Om Sharma's case, a Junior Engineer was promoted as Junior Engineer Grade-I on stop-gap arrangement basis and it was in that view of the matter, it was held that the employee in that case was entitled to pay of Junior Engineer Grade-I though his promotion was on stop-gap arrangement basis. In the present case, respondent No. 1 workman was not promoted to the post of Assistant Sanitary Inspector as per recruitment rules of the said post. He was given only current duty charge by the petitioner w.e.f. 22.06.1987 making it clear that he would not be entitled to pay of the said post of Assistant Sanitary Inspector. The procedure required for promotion was not followed while giving current duty charge to respondent No. 1 workman

w.e.f. 22.06.1987.

7 It was held by a three Judges Bench of the Hon'ble Supreme Court in **Ramakant Shripad Sinai Advalpalkar Vs. Union of India 1991 Supp. (2) SCC 733** as under:-

"The arrangements contemplated by this order plainly do not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only what in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement."

8 The ratio of law laid down by the Hon'ble Supreme Court in the above judgment in Ramakant Shripad Sinai Advalpalkar's case (Supra) is squarely applicable to the facts of the present case. In view of this judgment, respondent No. 1 workman was not entitled to pay of a higher post of Assistant Sanitary Inspector w.e.f. 22.06.1987 as he was holding only current duty charge of the said post. The impugned award of the Tribunal is evidently contrary to the law laid down by the Hon'ble Supreme Court in the abovementioned case. Hence this award cannot stand the test of judicial scrutiny and is liable to be set aside. Accordingly, the impugned award is set aside and this writ petition is allowed leaving the parties to bear their own costs.

DECEMBER 15, 2009
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S.N.AGGARWAL, J