

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

+ **W.P.(C) No. 7869/2002**

% **Date of Decision: 15th December, 2009**

MUNICIPAL CORPORATION OF DELHI

..... PETITIONER

! Through: Ms. Saroj Bidawat, Advocate.

VERSUS

\$ DEVINDER NARAYAN AND ANOTHER

.....RESPONDENTS

^ Through: Mr. Anuj Aggarwal, Advocate.

+ **W.P.(C) No. 8679/2005**

% **Date of Decision: 15th December, 2009**

MUNICIPAL CORPORATION OF DELHI

..... PETITIONER

! Through: Mr. Mukesh Gupta, Advocate.

VERSUS

\$ DEVINDER NARAYAN AND ANOTHER

.....RESPONDENTS

^ Through: Mr. Anuj Aggarwal, Advocate.

+ **W.P.(C) No.s 13288-91/2005**

% **Date of Decision: 15th December, 2009**

KARTAR SINGH AND OTHERS

..... PETITIONERS

! Through: Mr. Varun Prasad, Advocate.

VERSUS

\$ MUNICIPAL CORPORATION OF DELHI

.....RESPONDENT

^ Through: Ms. Liza M. Baruah for Mr. Gaurang Kanth,
Advocate.

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W.P.(C) No. 12025/2006

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Date of Decision: 15th December, 2009

GANGA RAM

..... PETITIONER

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Through: Mr. Varun Prasad , Advocate.

VERSUS

\$ MUNICIPAL CORPORATION OF DELHI

.....RESPONDENT

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Through: Ms. Saroj Bidawat, Advocate.

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)

All these writ petitions are proposed to be decided by this common order because questions of fact and law involved in all of them are identical and, in fact, it is so admitted by counsel for the both the parties.

2. The only short question that arises for consideration in these writ petitions is whether the workmen who were appointed as Mali in Municipal Corporation of Delhi and were asked to look after the work of Garden Chowdhary through verbal instructions by Assistant Director (Horticulture) are entitled to pay of the higher post of Garden Chowdhary for the period starting from the date they were asked to look after the work of the said post.

3. There are four awards on the same question which are subject matter of challenge in these writ petitions. Two are in favour of the management and two are in favour of the workmen. There are four petitions filed against these four awards, two by the Municipal Corporation of Delhi and two by the workmen. However, the question in

all these four petitions is the same whether the workmen are entitled to pay of higher post of Garden Chowdhary on the basis of their officiation on the said post while they were holding the substantive post of Mali.

4. Ms. Saroj Bidawat, learned counsel appearing on behalf of the Municipal Corporation of Delhi, has referred and relied upon two judgments of the Hon'ble Supreme Court, viz., **Mohd. Swaleh Vs. Union of India and Others, reported as (1997) 6 SCC 200**, and **State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, reported as (2007) 10 SCC 402**.

5. On the other hand, Mr. Anuj Aggarwal and Mr. Varun Prasad, learned counsel appearing on behalf of the workmen, have relied upon another judgment of the Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, (Civil Appeal No. 5546/1995 decided on 29.04.1998)**.

6. Ms. Saroj Bidawat, learned counsel appearing on behalf of the Municipal Corporation of Delhi, on the strength of the judgment of the Hon'ble Supreme Court in Arun Kumar Aggarwal's case (supra) and Mohd. Swaleh's case (supra), contends that the workmen are not entitled to pay of the post of Garden Chowdhary merely because they were asked to look after the work of the said post by Assistant Director (Horticulture), who according to her, was not competent to direct the workmen to look after the responsibilities of higher post of Garden Chowdhary.

7. Mr. Anuj Aggarwal and Mr. Varun Prasad, learned counsel appearing on behalf of the workmen, on the strength of the judgment of the Hon'ble Supreme Court in Hari Om Sharma's case (supra) contends to the contrary and submits that the workmen are entitled to pay of higher post on the principle of 'equal pay for equal work' for the period they had officiated on higher post on the instructions of their immediate superior

being Assistant Director (Horticulture).

8. I have carefully considered the above rival submissions made by the counsel for the parties and have also gone through the judgments relied upon by counsel for both the parties. In the opinion of this Court, the judgment of the Hon'ble Supreme Court in Hari Om Sharma's case (supra) is not applicable to the facts of the present case. In that case, the Hon'ble Supreme Court had ordered pay of a higher post to an employee who was promoted on stop-gap arrangement basis.

9. In the present case, the workmen were admittedly not promoted to the higher post of Garden Chowdhary in terms of recruitment rules applicable for the said post. Even the procedure for promotion to higher post of Garden Chowdhary was not followed by the petitioner and, therefore, the workmen cannot be extended the benefit of pay of higher post merely because they were asked to look after the work of Garden Chowdhary as a temporary measure by Assistant Director (Horticulture). There is absolutely nothing on record to show the period for which the workmen had worked on the post of Garden Chowdhary after they were asked to look after the work of the said post by their immediate superior being Assistant Director (Horticulture). Admittedly, the Assistant Director (Horticulture) is not the Competent Authority to consider the workmen for promotion to higher post of Garden Chowdhary in terms of the recruitment rules applicable for the said post. In case, the workmen are granted the benefit of pay scale of higher post of Garden Chowdhary without their being considered for promotion to the said higher post in terms of the recruitment rules, it will amount to granting them promotion from Mali to Garden Chowdhary without following the procedure for promotion and even without looking their service record required to be considered at the time of promotion.

10. In Arun Kumar Aggarwal's case (supra), it was held by the Hon'ble Supreme Court that an employee holding a higher post on current charge basis is not entitled to pay of the said higher post. In **Ramakant Shripad Sinai Advalpalkar Vs. Union of India, 1991 Supp (2) SCC 733**, a 3-Judge Bench of the Hon'ble Supreme Court has held as under:

“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.”

11. The ratio of law laid down by the Hon'ble Supreme Court in the above mentioned case is squarely applicable to the facts of the present case. In this case also, at best, the workmen can be said to have held the charge of the post of Garden Chowdhary on current charge basis and not on regular basis. Therefore, in view of the judgment of the Hon'ble Supreme Court in Ramakant Shripad's case (supra), the workmen are not entitled to pay of higher post of Garden Chowdhary. Moreover, the workmen in the present case, are even otherwise, not entitled to pay of higher post of Garden Chowdhary as they were allegedly asked to look after the responsibilities of the said higher post by their immediate superior being Assistant Director (Horticulture), who was not the Competent Authority to consider them for promotion to the higher post of Garden Chowdhary in terms of the recruitment rules.

12. In Mohd. Swaleh's case (supra), the Hon'ble Supreme Court declined to grant the benefit of pay scale of the post of Registrar to Deputy Registrar who was asked to officiate as Registrar by the Vice-

Chairman of the Central Administrative Tribunal on the ground that the Vice-Chairman of the Central Administrative Tribunal was not the Competent Authority to appoint a Registrar of the Tribunal. The ratio of law laid down by the Hon'ble Supreme Court in Mohd. Swaleh's case (supra) also equally applies to the facts of the present case. Since in the present case, directions were given by the workmen to look after the responsibilities of higher post of Garden Chowdhary by the Assistant Director (Horticulture), who was not the Competent Authority under the recruitment rules, the workmen are not entitled to pay of higher post of Garden Chowdhary.

13. Accordingly, two awards given by the Tribunal which are in favour of the workmen and against the management of the Municipal Corporation of Delhi are hereby set aside. The other two awards which are against workmen and in favour of the management of the Municipal Corporation of Delhi are maintained as this Court does not find any perversity in the said awards for the reasons given hereinabove.

14. All these writ petitions stand disposed of accordingly leaving the parties to bear their own costs.

A copy of this order be kept in the files of all the writ petitions which have been disposed of by this common order.

DECEMBER 15, 2009
'BSR'

S.N.AGGARWAL, J