

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

+ W.P.(C.) No. 11661/2009

% Date of Decision: 16th September, 2009

MUNICIPAL CORPORATION OF DELHI

..... PETITIONER

Through: Mr. Himanshu Upadhyaya, Advocate.

VERSUS

\$ DHARAM PAL

.....RESPONDENT

^ Through: NEMO.

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

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

C.M. No. 11563/2009 in W.P.(C.) No. 11661/2009

Delay in re-filing of this writ petition is condoned.

W.P.(C.) No. 11661/2009 and C.M. No. 11561/2009(for stay)

The MCD in this writ petition seeks to challenge an industrial award dated 13.10.2006 in I.D. No. 191/2006 by which it has been held that the respondent workman was entitled to the pay scale of Fitter of Rs. 260-400 (revised from time to time) w.e.f 02.06.1987 (date of promotion).

2. Heard on admission.
3. A perusal of the impugned award shows that the respondent workman had died during the pendency of the proceedings pending before the Labour Court. On his demise, his widow Shrimati Shakuntala Devi was substituted as his legal heir. The petitioner MCD knowing fully well about the death of the workman has filed this petition against the

deceased workman. The petition against a dead person is not maintainable. Furthermore, there is unexplained delay of about three years in filing of the present petition. It shall be significant to mention that the Court below in the impugned award has referred to two cases of Mr. Mukhram and Mr. Bhairo Singh, Fitters (both junior to the deceased workman) who have been granted the benefit of pay scale that has been granted to the deceased workman. This finding of fact contained in the impugned award has not been assailed in the present writ petition. It goes unchallenged that the petitioner has already granted the benefit of pay scale of Rs. 260-400 (revised from time to time) to at least two junior persons to the deceased workman namely to Mr. Mukhram and Mr. Bhairo Singh. There is no reason why the petitioner should discriminate with the deceased workman who was admittedly senior to Mr. Mukhram and Mr. Bhairo Singh, Fitters, in the matter of granting benefit of pay scale of Rs. 260-400 (revised from time to time) with effect from the date of his promotion as Fitter, i.e., 02.06.1987.

4. In view of what has been stated above, I do not find any infirmity, illegality or perversity in the impugned award that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed in limine. Stay application is also dismissed.

September 16, 2009,
'bsr'

S.N.AGGARWAL, J