

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

+ **W.P.(C.) No. 11378/2009**

% **Date of Decision: 03rd September, 2009**

MUNICIPAL CORPORATION OF DELHI

..... PETITIONER

! Through: Mr. Nalin Tripathi, Advocate.

VERSUS

\$ SH. ABID ALI (CARPENTER)

.....RESPONDENT

^ Through: Nemo.

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 (MCD) in this writ petition seeks to challenge an industrial award dated 16.10.2006 passed by the Industrial Adjudicator holding the respondent entitled to the pay scale of Rs. 260-400 as revised from time to time from the date of his regularisation.

2. Heard on admission.
3. Briefly stated the facts of the case relevant for the disposal of the present writ petition are that the respondent was appointed as Carpenter on muster roll basis with the petitioner in 1973. He was regularised as Carpenter w.e.f. 01.04.1980. The petitioner at the time of his regularisation did not grant him the pay scale of Rs. 260-400 approved

for the post of Carpenter and placed him in the pay scale of Rs. 210-270. Aggrieved therefrom the petitioner raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. The Labour Court, after considering the evidence of the parties and the documents produced by them before it, reached to a conclusion that the respondent was entitled to the pay scale of Rs. 260-400 as revised from time to time from the date of his regularisation because the petitioner had granted the same pay scale of Rs. 260-400 to the other two Carpenters, namely, Shri Mohd. Yasin and Shri Puran Singh pursuant to industrial award in their favour.

4. Mr. Nalin Tripathi has argued that the post of Carpenter in the MCD at the time respondent was regularised was in the pay scale of Rs. 210-270 and according to him, he was rightly regularised in the said pay scale w.e.f. 01.04.1980. Mr. Tripathi has submitted that the scale of Rs. 260-400 at the relevant time was applicable to the Senior Carpenter, which according to him, was a promotional post. He has drawn attention of this Court to the Recruitment Rules for the post of Senior Carpenter which are at pages 12-13 of the Paper Book. Mr. Tripathi, relying on the Recruitment Rules for the post of Senior Carpenter, submits that the respondent has already been promoted to the post of Senior Carpenter and has been granted the pay scale of Rs. 260-400. No such fact has been placed by the petitioner on record about the promotion of the respondent as Senior Carpenter and as to on which date he was granted said promotion. This fact was not placed by the petitioner even before the Labour Court. The Court below has relied upon the cases of Shri Mohd. Yasin and Shri Puran Singh who both are working as Carpenters with the petitioner and have been granted benefit of higher pay scale of Rs. 260-400 pursuant to industrial award given in their favour by the

Industrial Adjudicator. Admittedly Shri Mohd. Yasin and Shri Puran Singh are not Senior Carpenters. Since the petitioner has granted the same pay scale of Rs. 260-400 to the other two Carpenters, namely, Shri Mohd. Yasin and Shri Puran Singh, the petitioner cannot treat the respondent discriminately as it will amount to treating the similarly situated persons with inequality in the matter of their pay. The reliance on the Recruitment Rules placed by the petitioner is of no legal consequence because nothing was placed by the petitioner before the Labour Court as to when the Recruitment Rules for the post of Senior Carpenter were made and till what date it remained in existence. In the absence of the same, the petitioner cannot take any advantage of the Recruitment Rules for the post of Senior Carpenter which may be existing at the time the petitioner was regularised, i.e., on 01.04.1980. Be that as it may, this Court does not find any perversity or illegality in the impugned award because the said award is based upon higher pay scale of Rs. 260-400 having already been granted by the petitioner to the other two Carpenters, namely, Shri Mohd. Yasin and Shri Puran Singh.

5. In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed in limine. The stay application is also dismissed.

SEPTEMBER 03, 2009
'bsr'

S.N.AGGARWAL, J