

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

+ **W.P.(C) 2521/1988 & CM No.7564/2006 (u/S 151 CPC for stay)**

% **Date of decision: 20th April, 2010**

**MANAGEMENT OF MUNICIPAL
CORPORATION OF DELHI** **..... PETITIONER**
Through: Ms. Saroj Bidawat, Advocate

Versus

DELHI ADMINISTRATION & ORS. **..... RESPONDENTS**
Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

AND

+ **W.P.(C) 3569/1996**

SEVTI DEVI **..... PETITIONER**
Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

Versus

**PRESIDING OFFICER, LABOUR
COURT-IV, DELHI & ANR.** **.... RESPONDENTS**
Through: Ms. Saroj Bidawat, Advocate

AND

+ **W.P.(C) 3658/1996**

KAMLA DEVI **..... PETITIONER**
Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

Versus

**PRESIDING OFFICER, LABOUR COURT
NO. IV DELHI & ANR.** **..... RESPONDENTS**
Through: Ms. Saroj Bidawat, Advocate

AND

+

W.P.(C) 4575/1996

SMT. S. SACHDEVA

..... PETITIONER

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

Versus

THE PRESIDING OFFICER, LABOUR

COURT NO.VI, DELHI & ANR.

.... RESPONDENTS

Through: Ms. Saroj Bidawat, Advocate

AND

+

W.P.(C) 5555/1998 & CM No.10729/1998 (u/S 151 CPC for stay)

MANAGEMENT OF MUNICIPAL

CORPORATION OF DELHI

..... PETITIONER

Through: Ms. Saroj Bidawat & Mr. Mukesh
Gupta, Advocate

Versus

PRESIDING OFFICER, LABOUR

COURT-VI & ANR.

..... RESPONDENTS

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

AND

+

W.P.(C) 6096/2002 & CM No.10394/2002 (u/S 151 CPC for stay)

MUNICIPAL CORPORATION OF DELHI

..... PETITIONER

Through: Ms. Saroj Bidawat, Advocate

Versus

USHA SHARMA @ USHA BAKSHI & ANR. RESPONDENTS

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

AND

+ W.P.(C) 8349/2003 & CM No.13514/2003 (u/S 151 CPC for stay)

MUNICIPAL CORPORATION OF DELHI PETITIONER

Through: Ms. Saroj Bidawat, Advocate

Versus

SMT. RAKESH KUMARI

..... RESPONDENT

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

AND

+ W.P.(C) 44/2003 & CM No.51/2003 (u/S 151 CPC for stay)

MUNICIPAL CORPORATION OF DELHI PETITIONER

Through: Ms. Saroj Bidawat, Advocate

versus

SMT. M. BHATNAGAR

..... RESPONDENT

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal & Ms. Swarnima Aggarwal,
Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers 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

RAJIV SAHAI ENDLAW, J.

1. These eight writ petitions entail common questions of law & fact and are being listed together. WP(C) No.2521/1988 is the main petition of the MCD challenging / impugning the award dated 13th May, 1988 of the Industrial Tribunal. The other petitions are off-shoots of the said award.

2. The award impugned in WP(C) No.2521/1988 was made on the following reference:

“Whether all those ‘B’ Grade Staff Nurses and Auxiliary Nurses, Midwives, who have completed three years services and are posted against the post of ‘A’ grade staff nurse should be promoted to ‘A’ grade staff nurse with retrospective effect, and, if so, what directions are necessary?”

Whether anomaly in the pay scales of ‘B’ grade staff nurse and auxiliary Midwives or nurses be removed with retrospective effect i.e. from 01.01.1973 and if so what further directions are necessary?”

3. It was the claim of the workmen before the Industrial Tribunal that:

- (i) The petitioner MCD has been running a large number of medical institutions.
- (ii) In the said medical institutions, the petitioner MCD had created two types of staff nurses namely Grade ‘A’ Staff Nurses and Grade ‘B’ Staff Nurses; a third category known as Auxiliary Nurse / Midwives also existed. The pay-scales and other benefits of the three categories differed. Also, the nurses in Ayurvedic Hospital, Haiderpur had been placed in a lower pay scale than the Grade ‘B’ Nurses in the other institutions.
- (iii) Grade ‘B’ Staff Nurses and Auxiliary Nurses / Midwives are normally deputed against the sanctioned posts of Grade ‘A’ Staff

Nurses and even otherwise are made to carry-on duties at par with Grade 'A' Staff Nurses successfully for several years.

(iv) While Grade 'A' Staff Nurses have the promotional avenue to the post of Matron, there is no such channel of promotion for Grade 'B' Staff Nurses or the Auxiliary Nurses / Midwives.

(v) It was thus claimed that Grade 'B' Staff Nurses who had been working on the post of Grade 'A' Staff Nurses be declared as entitled to the scale of Grade 'A' Staff Nurses. Instances of 27 such nurses were specifically given.

(vi) That though the work of Grade 'B' Staff Nurses, Auxiliary Nurses/ Midwives was the same but they had been placed in different pay scales. Relief was also claimed for equalization of the pay scales of all the Grade 'B' Staff Nurses including the nurses in Ayurvedic Hospital, Haiderpur.

4. The petitioner MCD contested the claim by contending:

(i) That the nurses working in Ayurvedic Hospital, Haiderpur are actually *Dais* / Midwives, a Class-IV post and are not nurses.

(ii) That as per the recruitment rules approved by MCD for different posts in the medical institutions of MCD, Grade 'B' Staff Nurses are not promoted to Grade 'A' because they do not fulfill the

qualification of Grade 'A' Staff Nurses; they are neither registered with the Nursing Council nor qualified as Grade 'A' Staff Nurses as per the requirement of the Indian Nursing Council Act, 1947. Only those Grade 'B' Staff Nurses who acquire the qualification prescribed for Grade 'A' Staff Nurses can be promoted to that grade. Neither of the 27 Grade 'B' Nurses working against the posts / vacancies of Grade 'A' Staff Nurses and whose instance was given in the claim petition have the requisite qualification of a Grade 'A' Staff Nurse.

- (iii) That the nature of work of Grade 'B' Staff Nurses is different from that of Auxiliary Nurses / Midwives.

5. The Tribunal found:

- (a) That the petitioner MCD in its written statement had neither admitted nor denied that the 27 Grade 'B' Staff Nurses had been working for last several years against the posts / vacancies of Grade 'A' Nurses. It was noted that most of the said 27 Grade 'B' Staff Nurses had been working as Grade 'A' Staff Nurses for between three to twenty years.
- (b) That the standard of training of Grade 'B' Staff Nurses is slightly lower than those of Grade 'A' Staff Nurses. For admission to the course of Grade 'B' Staff Nurse, the candidate was required to

have been educated till 8th standard only and was not required to have a training in the nursing of men. If a Grade 'B' Staff Nurse wanted to become a Grade 'A' Staff Nurse or General Nurse, she was required to undergo further training of six months after 4 to 5 years of service as a Grade 'B' Nurse and to also pass the General Nursing Examination.

- (c) That as per the Circular dated 27th March, 1973 of the MCD, all the Grade 'B' Staff Nurses who had worked for five years were given the option to undertake training for six months and pass general nursing examination for promotion as Grade 'A' Nurse.
- (d) Vide another Circular dated 4th July, 1974 all the Grade 'B' Staff Nurses were given option to undergo only the training for six months to be promoted as Grade 'A' Staff Nurse. The requirement of passing the General Nursing Examination was deleted.
- (e) That there was no Rule under which a Grade 'B' Staff Nurse who had worked for a long period as a Grade 'A' Staff Nurse became entitled to the emoluments of a Grade 'A' Staff Nurse.

6. The Tribunal held:

- (a) That as per common sense a person who had worked for more than three years in a capacity, knows all the duties and functions of that post; to require a Grade 'B' Staff Nurse who had worked as a Grade 'A' Staff Nurse for more than 20 years, to undergo a training

for six months to be entitled to the emoluments of a Grade 'A' Staff Nurse was ridiculous; if a person is unfit to work against a particular post even after working against that post for more than twenty years, six months training will certainly not improve the efficiency of that incumbent.

- (b) A person who is working against a post for a number of years cannot be subsequently told that he is not entitled to promotion. Reliance was placed on *Smt. Lajwanti Bhatnagar Vs. MCD* 1977 RLR Note 70, *Dwarka Prasad Chandral Vs. The District Education Officer, Jabalpur* 1986 (1) SLJ 355 & *Bharat Singh Vs. Union of India* 1987 (3) SLJ 423.
- (c) The Tribunal as such held that all the Grade 'B' Staff Nurses, Auxiliary Nurses and Midwives who had completed three years service against the post of Grade 'A' Staff Nurses are entitled to the pay of Grade 'A' Staff Nurses for the period during which they worked against the post of Grade 'A' Staff Nurses. They were also held entitled to be promoted as Grade 'A' Staff Nurses. All the Grade 'B' Staff Nurses and Auxiliary Nurses / Midwives who had worked for more than ten years as Grade 'A' Staff Nurses were held entitled to the pay of Grade 'A' Staff Nurses from the date of the reference namely 27th June, 1979. They were directed to be promoted as Grade 'A' Staff Nurses from the date of the publication of the award.

- (d) As far as the disparity in the pay scale of Grade 'B' Staff Nurses and Auxiliary Nurses / Midwives and nurses of Ayurvedic Hospital, Haiderpur was concerned, the Tribunal held that the witnesses of the MCD could not demonstrate the difference in the duties. It was held that the difference in pay was a distinction without any difference. The Auxiliary Nurses / Midwives were found to have performed same functions as in the same hospital and were thus held entitled to the same pay scale as a Grade 'B' Staff Nurses.

7. Aggrieved from the aforesaid award, the present petition was preferred. Rule was issued and operation of the award stayed vide ex parte order dated 24th November, 1988. However, subsequently vide order dated 10th August, 1989, on the application of the petitioner for interim stay, it was held that the concerned workmen being then still in service with the petitioner MCD and the effect of the award being of payment of extra salary to them, it would be unjust to deprive the workmen of the benefits of the award till the award is set aside. It was held that in the event of the writ petition being allowed, excess payment, if any made to the workmen in question could be adjusted towards payment of future dues and / or from the retiral benefits payable to them. Accordingly, the ex parte stay of operation of the award was vacated and the petitioner MCD was directed to pay to the concerned workmen enhanced salary as awarded by the Industrial Tribunal and subject to the final decision of the writ petition. The petition however has remained pending for the last over twenty years. At one stage, it was dismissed

due to non prosecution by the petitioner MCD and restoration was applied for only after two years of such dismissal. Be that as it may, it falls for adjudication whether any interference is called for in the award aforesaid.

8. At the outset, I may state that apart from the merits, this is not found to be a fit case for exercise of discretion under Article 226 of the Constitution of India. The workmen involved are nurses. The work of a nurse especially in government hospitals is extremely arduous in nature. Nursing is a noble profession. It is not merely an occupation to earn a living but a benevolent service. The nursing of the sick, said Florence Nightingale is a vocation as well as a profession. Nurses live in the midst of distressing atmosphere and the Tribunals / Courts cannot shut their minds to the said reality while dealing with the issues relating to the nursing profession.

9. Most of the nurses are from economically weaker sections of the society. This Court having not deemed it appropriate to stay the operation of the award and having particularly directed the petitioner MCD to make payments in terms of the award and a long time of over twenty years having now elapsed, it would be extremely harsh and unjust if nurses, a large number of whom may have in the interregnum retired, are now to be directed (in the event of the petition succeeding) to refund the excess amount so received by them. In fact, I find that this Court in *MCD Vs. Krishna Sharma* MANU/DE/1351/2003 had dismissed a writ petition against the order of the Labour Court upholding the entitlement of the respondent nurses in that case to the amounts in terms of the award impugned in this petition. Directing the nurses who have received payments in terms of the

award to refund the amount would not only put them to extreme hardship but would also be impracticable. For the nurses who continue to remain in service of the petitioner MCD, setting aside of the award may mean adjustment of the entire retiral benefits against the payments already received by them in the last over twenty years in terms of the award.

10. I find such a situation of depriving a nurse of retiral benefits after having worked for over 30/40 years to be not an equitable option. The Supreme Court in ***Chandra Singh Vs. State of Rajasthan*** AIR 2003 SC 2889 held that issuance of a writ of certiorari is a discretionary remedy and that the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India may not strike down an illegal order although it would be lawful to do so and in a given case may refuse to extend the benefit of discretionary relief to the applicant. Similarly, in ***Taherakhatoon Vs. Salambin Mohammad*** (1999) 2 SCC 635, even at the time of dealing with the appeal after grant of special leave, it was held that the Court was not bound to go into the merits and even if entering into the merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in ***Filmistan Exhibitors Ltd. Vs. N.C.T.***, 131(2006) DLT 648 by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in ***Babu Ram Sagar Vs. Presiding Officer, Labour Court*** MANU/DE/9235/2006 by refusing to interfere in exercise of discretionary power inspite of holding the reasons given by the Labour Court to be not convincing. I

am not inclined to exercise the discretion under Article 226 of the Constitution of India in quashing the award on this ground alone.

11. Propriety however demands a discussion on the merits also. The only contention of the petitioner MCD is that the award is contrary to the Recruitment Regulations. Vaguely it is suggested that same is also contrary to the subsequent judgment of the Supreme Court in *Secretary, State of Karnataka Vs. Umadevi* AIR 2006 SC 1806. It is contended that the award amounts to regularizing Grade 'B' Staff Nurses as Grade 'A' Staff Nurses when under the Recruitment Regulations they are not eligible to appointment as Grade 'A' Staff Nurses.

12. I do not agree with the aforesaid contention of the counsel for the petitioner MCD. Though it was the stand of the petitioner MCD that the educational qualification and the examination for appointment as a Grade 'A' Staff Nurses is different from that for a Grade 'B' Staff Nurses but the petitioner MCD vide its Circular dated 4th July, 1974 supra relaxed the criteria of educational qualification and of examination and required the Grade 'B' Staff Nurses to only undergo training of six months for promotion as Grade 'A' Staff Nurse. There was no requirement of completing the educational qualification or to undertake any examination. The petitioner MCD cannot now turn around and contend that the educational qualification and the examination is also a necessary criteria.

13. Thus, the only question which remains for consideration is whether undergoing training of six months is essential and whether the reasoning of the

Tribunal, of requirement of such training of six months after a Grade 'B' Staff Nurse has worked and performed duties as Grade 'A' Staff Nurse for over twenty years as being ridiculous, requires interference.

14. Though not in relation to nurses, in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation* AIR 1990 SC 371 the controversy centered around the question whether the petitioners therein were possessed of the requisite qualifications to hold the post so as to entitle them to be confirmed. The petitioners in that case had been working in the said posts for several years and had gained sufficient experience in the actual discharge of duties attached to the post held by them. The Supreme Court held that the practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. It was held that once the appointments were made as daily rated workers and the petitioners were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Three years experience, ignoring the artificial breaks in service for short periods created by the respondent therein, was held to be sufficient for confirmation.

15. The Supreme Court in *Rattan Lal Vs. State of Haryana* AIR 1987 SC 478, in relation to teachers, took note of the government exploiting the situation by making ad-hoc appointments. It was observed that the same is not a sound

personnel policy and was also held to be in breach of Articles 14 and 16 of the Constitution. It was held that the Courts cannot permit such a situation to last any longer. The government was held to be expected to function as a model employer. The Supreme Court in the said judgment directed the State Government to consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment of those teachers who had been victims of the system of 'ad-hoc' appointments. A single Judge of the Karnataka High Court in *Syed Younus Ali Vs. Principal, Kendriya Vidyalaya* MANU/KA/0781/1993 has also deprecated the practice of ad-hoc appointment. I find the aforesaid principles applicable to the present case also. The practice followed by the petitioner MCD of appointing Grade 'B' Staff Nurses against the posts / vacancies of Grade 'A' Staff Nurses and to make them work in the same fashion for several years is nothing but 'ad-hocism' and an attempt to exploit the situation. The petitioner MCD by making the appointments in Grade 'B' post at a lower pay-scale and making the said appointees to work against the posts / vacancies in Grade 'A' is exploiting the nursing personnel.

16. There is merit in the contention of the respondents nurses, though not dealt with in the award of the denial of promotional avenues also. The Supreme Court in *Delhi Judicial Services Association Vs. Delhi High Court* AIR 2001 SC 2102 has held that stagnation for very many years for lack of promotional avenue which is inherent in the very nature of the service and limitation of other openings results in the judicial officers being less than contented in the absence of incentive or hope for a better future. Such a situation was held to be not

conducive to bring out the best in them. It was held that it is desirable from every point of view to maintain the morale and efficiency of the employees at the highest throughout their tenure. To the same effect is *Dr. Ms. O.Z. Hussain Vs. Union of India* AIR 1990 SC 311 where it has also been held that promotion is a normal incidence of service. Again recently in *Md. Abdul Kadir Vs. Director General of Police, Assam* 2009 (6) SCC 611, it has been held that if those working as ad-hoc or temporary staff for decades, are converted to regular permanent staff, that would boost their morale and efficiency. The same applies to the present case also. Moreover, considering the nature of duties to be performed by nurses, practical experience is found to far outweigh the educational qualifications and passing the qualifying exam.

17. As far as the contention of the counsel for the petitioner on the basis of *Umadevi* (supra) is concerned, the Supreme Court recently in *Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karmchari Sanghatana* 2009 (8) SCC 556 has reiterated that powers of the Labour Court are very wide and once an unfair labour practice on the part of the employer is established, the Labour Courts are empowered to issue preventive as well as positive directions to an erring employer and such issues pertaining to unfair labour practices were held to have been not referred to or considered in the *Umadevi* case.

18. It is also the case of the petitioner MCD that as per the Indian Nursing Council also the distinction between Grade 'A' & Grade 'B' Staff Nurses has ceased to exist. In the circumstances, for the petitioner to insist that the said difference exists is not found justified.

19. The petitioner MCD has not disputed / controverted that the practice of making Grade 'B' Staff Nurses perform the duties of Grade 'A' Staff Nurse exists. The Tribunal has found some of 27 such nurses whose instances were given, to have performed functions of Grade 'A' Staff Nurse for as long as 20 years. It defies logic, why such nurse should be paid lesser than a nurse appointed as a Grade 'A' Staff Nurse, when both do the same work. Article 39(d) of the Constitution enshrines the principle of equal pay for equal work. Reference can be made to *Surinder Singh Vs. Engineer-in-Chief, CPWD* AIR 1986 SC 584 and *Union of India Vs. Dineshan K.K.* AIR 2008 SC 1026. The Supreme Court in *Bhagwan Dass Vs. State of Haryana* AIR 1987 SC 2049 also held that once the nature and functions of the work are not shown to be dissimilar, the fact that the recruitment was made in one way or the other would not be relevant and the principle of equal pay for equal work would come into play. Though the Supreme Court in *State of Madhya Pradesh Vs. Ramesh Chandra Bajpai* MANU/SC/1497/2009 held that holders of higher educational qualification can be treated as a separate class and a differential in pay would not be unreasonable but in the present case as aforesaid, the petitioner MCD by its own circular (supra) waived the requirement of higher educational qualification.

20. As far as the other part of the award is concerned, the Tribunal has given a finding of fact of there being no difference in the work being performed by the Grade 'B' Staff Nurses and by the Auxiliary Nurses / Midwives and no case for interference in the said factual finding is made out. It is settled law that in exercise of jurisdiction under Article 226, it is not for the High Court to

constitute itself into an appellate Court over Tribunals constituted under special legislations, like the Industrial Disputes Act, to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. Reference in this regard may be made to *Sadhu Ram Vs. DTC* AIR 1984 SC 1467 & *G.M. ONGC Vs. ONGC Contractual Workers Union* JT 2008 (7) SC 309. The petitioner MCD has not cited any evidence which may have been led before the Tribunal for making out a distinction between the two. Undoubtedly, the Supreme Court in *State of Rajasthan Vs. Shantilal Jain* 1989 Supp. (2) SCC 777 has held that the State is empowered to create two cadre of nurses and compounders, but when an industrial dispute in that regard is raised, it is for the employer to justify a real distinction between the two cadres and the Industrial Tribunal / Labour Court remains entitled to, if satisfied that the difference is illusory, declare the same as an unfair labour practice and to grant relief accordingly.

21. The petitioner MCD has therefore not been able to make out any case for interference with the award impugned in this petition. The petition is dismissed. However, since there was no interim order, no order as to costs.

WP(C) No.3569/1996

22. This petition has been preferred by Smt. Sevti Devi with respect to the order dated 23rd September, 1995 of the Labour Court dismissing her application under Section 33C(2) of the Act on the basis of award aforesaid. The Labour Court has held that the said Smt. Sevti Devi had failed to prove that she had ever

worked against the post of Grade 'A' Staff Nurse for any period. The petitioner Smt. Sevti Devi has not been able to make out any case for interference in the said factual finding of the Labour Court. She however relies on a Circular dated 9th April, 1996 of the Assistant Commissioner (Health) of the MCD issuing a general direction for compliance with the award aforesaid and to avoid issuance of recovery certificates against the MCD. However, the said Circular does not advance the case of the petitioner Smt. Sevti Devi inasmuch as she has failed to prove that she was appointed against the post / vacancy of a Grade 'A' Staff Nurse or has worked as a Grade 'A' Staff Nurse for any period of time. In the circumstances, the writ petition is dismissed.

WP(C) No.3658/1996

23. This petition has been preferred by Smt. Kamla Devi with respect to the order dated 13th May, 1988 of the Labour Court dismissing her application under Section 33C(2) of the Act on the basis of award aforesaid. The position is the same as in WP(C) No.3569/1996. Accordingly, this petition is also dismissed.

WP(C) No.4575/1996

24. This Petition has been preferred by Smt. S. Sachdeva against the order dated 1st March, 1995 of the Labour Court dismissing her application under Section 33C(2) of the Act on the basis of award aforesaid. The petitioner Smt. S. Sachdeva failed to appear before the Labour Court to give evidence of her having been appointed against the post / vacancy or having worked as a Grade 'A' Staff Nurse. Evidence of the Union representative only was given. The Labour Court

has rightly held that in the absence of the petitioner Smt. S. Sachdeva having appeared herself, it could not be established whether she had worked as a Grade 'A' Staff Nurse or not. The Labour Court also held that even the union representative has in his evidence not proved that the petitioner Smt. S. Sachdeva had worked as a Grade 'A' Staff Nurse. There is no merit in the petition, the same is dismissed.

WP(C) No.5555/1998

25. This writ petition has been preferred by the petitioner MCD against the order dated 1st May, 1998 of the Labour Court on an application filed by the respondent Smt. Lalita Chopra under Section 33C(2) of the I.D. Act for recovery of the amounts in enforcement of the award aforesaid. Though the MCD had controverted that the said Smt. Lalita Chopra was never entrusted duties and responsibilities of a Grade 'A' Staff Nurse but the Labour Court on the basis of evidence led before it found that the said Smt. Lalita Chopra had been appointed against the post of a Grade 'A' Staff Nurse and had also completed three years of service as such. Accordingly, order in her favour was made. Such finding of fact of the Labour Court cannot be interfered with in the writ jurisdiction. The writ petition is accordingly dismissed.

WP(C) 6096/2002

26. The petitioner MCD impugns the order dated 9th October, 1998 of the Labour Court on an application under Section 33 C(2) of the I.D. Act by one Smt. Usha Sharma @ Usha Bakshi in enforcement of the award (supra). The

Labour Court found that the MCD had in its reply not controverted the specific pleadings that the said Smt. Usha Sharma @ Usha Bakshi had been posted and had been working against a vacant post of Grade 'A' Staff Nurse. She was also not cross examined on this aspect. Accordingly, MCD was directed to pay the differential amount of Rs.91,310/- to her. This Court vide ex parte order has stayed the recovery of the said amount. The finding of fact of the Labour Court of the said Smt. Usha Sharma @ Usha Bakshi having been posted against and worked as a vacancy for a Grade 'A' Staff Nurse cannot be interfered with in the exercise of writ jurisdiction. The other grounds urged by the MCD in the petition have already been dealt with in the main petition herein above. Accordingly, this petition is dismissed and the interim order of stay vacated. The MCD is directed to make the payments within six weeks failing which it shall also incur simple interest at 7% per annum.

WP(C) 8349/2003

27. This petition has been preferred by the petitioner MCD against the order dated 21st December, 2002 of the Labour Court on an application by the respondent Smt. Rakesh Kumari under Section 33 C(2) of the Act in enforcement of the award (supra). The Labour Court found that the MCD had in its reply not controverted the specific pleadings that the said Smt. Rakesh Kumari had been posted and had been working against a vacant post of Grade 'A' Staff Nurse. She was also not cross examined on this aspect. Accordingly, MCD was directed to pay the differential amount of Rs.67,736/- to her. This Court vide ex parte order has stayed the recovery of the said amount. The finding of fact of the

Labour Court of the said Smt. Rakesh Kumari having been posted against and worked as a vacancy for a Grade 'A' Staff Nurse cannot be interfered with in the exercise of writ jurisdiction. The other grounds urged by the MCD in the petition have already been dealt with in the main petition herein above. Accordingly, this petition is dismissed and the interim order of stay vacated. The MCD is directed to make the payments within six weeks failing which it shall also incur simple interest at 7% per annum.

WP(C) 44/2003

28. This petition has been preferred by the petitioner MCD against the order dated 28th May, 2002 of the Labour Court on an application by the respondent Smt. M. Bhatnagar under Section 33 C(2) of the Act in enforcement of the award (supra). The Labour Court found that the MCD had in its reply not controverted the specific pleadings that the said Smt. M. Bhatnagar had been posted and had been working against a vacant post of Grade 'A' Staff Nurse. She was also not cross examined on this aspect. Accordingly, MCD was directed to pay the differential amount of Rs.1,34,343/- to her. This Court vide ex parte order has stayed the recovery of the said amount. The finding of fact of the Labour Court of the said Smt. M. Bhatnagar having been posted against and worked as a vacancy for a Grade 'A' Staff Nurse cannot be interfered with in the exercise of writ jurisdiction. The other grounds urged by the MCD in the petition have already been dealt with in the main petition herein above. Accordingly, this petition is dismissed and the interim order of stay vacated. The MCD is directed

to make the payments within six weeks failing which it shall also incur simple interest at 7% per annum.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th April, 2010
gsr