

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA No.126/2010 & CM Nos.3316/10, 3318/10
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Abid Ali Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

WITH

LPA No.129/2010 & CM Nos.3366/10, 3368/10
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Jagdish Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

LPA No.204/2010 & CM No.5415/10
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Tajaduke Khan Respondent through
Mr. Varun Prasad, Adv.

LPA No.117/2011 & CM Nos.2004/11, 2006-08/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Anoop Singh Respondent through

LPA No.118/2011 & CM Nos.2009/11, 2011-13/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Raj Kumar Respondent through
Mr. Bankey Bihari, Adv.

LPA No.119/2011 & CM Nos.2014/11, 2016-18/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Ramjeet Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

LPA No.120/2011 & CM Nos.2019/11, 2021-23/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Narain Singh Respondent through

LPA No.121/2011 & CM Nos.2024/11, 2026-28/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus

Ved Prakash Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

LPA No.122/2011 & CM Nos.2029/11, 2031-33/11
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.

	with Ms. Mini Pushkarna & Mr. Kanwar Faisal, Adv.
versus	
Ved Prakash	Respondent through
LPA No.365/2011 & LPA Nos.368-377/11	
Mam Baksh & Ors.	Appellant through Mr. Pramod Gupta, Mr. Ajit Kalia & Mr. Ankit Lamba, Adv.
versus	
M.C.D.	Respondent through Ms. Amita Gupta & Mr. Praveen Kumar, Adv.
WP(C) No.7606/2002	
M.C.D.	Appellant through Ms. Amita Gupta & Mr. Praveen Kumar, Adv.
versus	
Mahabir & Ors.	Respondent through Mr. Pramod Gupta, Mr. Ajit Kalia & Mr. Ankit Lamba, Adv.
WP(C) No.19716-22/2005	
Satpal & Ors.	Appellant through Mr. Pramod Gupta, Mr. Ajit Kalia & Mr. Ankit Lamba, Adv.
versus	
M.C.D.	Respondent through Mr. Sarabh Khanna for Mr. Gaurang Kanth, Adv.
WP(C) No.89-95/2006	
Mohd. Razak & Ors.	Appellant through Mr. Pramod Gupta, Mr. Ajit Kalia & Mr. Ankit Lamba, Adv.
versus	
M.C.D.	Respondent through Mr. Sarabh Khanna for

Mr. Gaurang Kanth, Adv.

WP(C) No.19096/2006 & CM No.15856/2006
M.C.D.

.....Appellant through
Ms. Saroj Bidawat, Adv.

versus

Bharat Singh

.....Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Advs.

WP(C) No.7851/2008 & CM No.15154/2008
M.C.D.

.....Appellant through
Ms. Saroj Bidawat, Adv.

versus

Abdul Gafoor

.....Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Advs.

WP(C) No.7611/2009 & CM No.3746/2009
M.C.D.

.....Appellant through
Mr. Himanshu Upadhyay,
Adv.

versus

Bhima

.....Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Advs.

WP(C) No.1861/2010 & CM Nos.3721-22/2010
M.C.D.

.....Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Advs.

versus

Ram Achal

.....Respondent through
Mr. Varun Prasad, Adv.

WP(C) No.1862/2010 & CM Nos.3725/2010, 3727/2010
M.C.D.

.....Appellant through
Mr. H.S. Phoolka, Sr. Adv.

with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.
versus
Iqbal Ahmed (Carpenter) Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

WP(C) No.2202/2010 & CM No.4481/2010
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus
Raje Ram Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

WP(C) No.6268/2010 & CM No.12422/2010
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus
Kanha Ram Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Adv.

WP(C) No.167/2011 & CM No.309/2011
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Adv.

versus
Om Prakash Respondent through
Mr. Varun Prasad, Adv.

WP(C) No.606/2011 & CM No.1289/2011
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.

versus
Awatar Giri with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Advs.
.....Respondent through
Mr. Varun Prasad, Adv.

WP(C) No.779/2011 & CM No.1640/2011
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Advs.

versus
Ram Singh Respondent through
Mr. Varun Prasad, Adv.

WP(C) No.780/2011 & CM No.1642/2011
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Advs.

versus
Mohd. Rafiq Respondent through
Mr. Varun Prasad, Adv.

WP(C) No.788/2011 & CM Nos.1654-55/2011
M.C.D. Appellant through
Mr. H.S. Phoolka, Sr. Adv.
with Ms. Mini Pushkarna &
Mr. Kanwar Faisal, Advs.

versus
Shashi Pal Respondent through
Mr. Pramod Gupta, Mr. Ajit
Kalia & Mr. Ankit Lamba,
Advs.

WP(C) No.1320/2011 & CM No.2804/2011
M.C.D. Appellant through
Mr. Sarabh Khanna for
Mr. Gaurang Kanth, Adv.

versus
Workman Maiku Respondent through
Mr. Pramod Gupta, Mr. Ajit

Kalia & Mr. Ankit Lamba,
Advs.

% Date of Hearing: May 20, 2011

Date of Decision: May 31, 2011

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

- | | |
|--|-----|
| 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 |

VIKRAMAJIT SEN, J.

CM Nos.3318/10, 3368/10, 2006/11, 2011/11, 2016/11, 2021/11, 2026/11, 2031/11,

1. Delay in filing the present Appeals is condoned.

CM No.2008/11, 2012/11, 2018/11, 2022/11, 2027/11, 2033/11

2. Delay in refiling the present Appeals is condoned.

CM Nos.3722/10, 3727/10, 1655/11

3. Delay in filing the present Petitions is condoned.

LPA Nos.126/10, 129/10, 204/10, 117-22/11, 365/11, 368-77/11, WP(C) Nos.7606/02, 19716-22/05, 89-95/06, 19096/06, 7851/08, 7611/09, 1861-62/10, 2202/10, 6268/10, 167/11, 606/11, 779-80/11, 788/11, 1320/11

4. The central dispute involved in these Appeals is whether the concerned Workmen were entitled to be regularised in the pay scale of ₹ 260-400/- and not only from 1.1.1996. The Workmen were initially taken into the employment of the Municipal Corporation of Delhi (MCD) on Muster Roll basis on

various dates. They were regularised with effect from 1.4.1980; and have already been granted the scale of ₹ 260-400/- with effect from 1.1.1996. The MCD contends that the Workmen, who variously were Masons/Carpenters/Painters/Fitters, remained at the 'Entry/Junior' level attracting pay scale of ₹ 210-270 at the relevant time and did not progress to the 'Promotional/Senior' level in the pay scale of ₹ 260-350/- or ₹ 260-400/-. On behalf of the Workmen, it is vehemently contended that this dichotomy is fictional and has been created by the MCD only in defence of the illegal position which has been adopted by them in the present litigation. The Workmen submit that from the inception there was just a single level to which all workmen belonged. A perusal of the Office Order dated 12.7.1982 of the MCD supports the contention of the Workmen inasmuch as in circa 1982 none of the Workmen were designated as Senior or Junior, as is now sought to be impressed upon us by learned Senior Counsel for the MCD. We think it necessary to extract the Office Order to clarify the position:-

The Commissioner, M.C.D. exercising the powers of the Corporation, vide decision No.2340/DW/Corp. dated 11-6-1982 has been pleased to approve of implementation of award given by the Board of Arbitration (J.C.M.) revising the pay scale of skilled workers of the following categories

from Rs.260-350 to Rs.260-400 w.e.f. 1-1-1973, notionally to the categories of skilled workers, as stated below; in position on or before 1-3-1973.

<u>Sl.No.</u>	<u>Category</u>
1.	Mason
2.	Carpenter
3.	Painter
4.	Fitter
5.	Black Smith
6.	Operator
7.	Moulder
8.	Turner
9.	Welder
10.	Wireman Grade-I
11.	Mechanic Setter
12.	Electric Mistri
13.	Electric Motor Mechanic

The actual benefit in terms of arrears of pay etc. would accrue to them only w.e.f. 1-3-1973. This benefit may also be given to such Municipal employees who have entered in Municipal services after 1-3-1973.

5. The Award passed by the Presiding Officer, Industrial Tribunal-II, Delhi, pursuant to a Reference made by the Secretary (Labour), Government of National Capital Territory of Delhi, has found in favour of the Workmen. It noted that the MCD, vide Resolution 609 dated 12.7.1989, had approved the regularisation of Muster Roll Workers engaged upto 31.3.1984. Thereafter, the Commissioner, vide Order dated 16.2.1990, had

regularised Muster Roll Workers, such as the Workmen before us, with effect from 1.4.1990. The Tribunal further opined that all the Masons/Carpenters/Painters/Fitters were granted similar pay scale of ₹ 3050-4590/- in the Engineering Department as also in other Departments of the MCD. It also noted that the MCD had granted pay scale of ₹ 260-400/- and equivalent scale to Workmen in the category of Masons/ Carpenters/ Painters/ Fitters in compliance with the Orders of various Courts and Tribunals and that there was no justification for discrimination within their ranks. The Reference was answered in these terms. Writ Petitions were filed from time to time, decisions in most of which were challenged by way of Appeals in this Court. Conflicting and contrary decisions have been given by different Benches which underscores the wisdom and, in fact the curial imperative, of bunching similar matters and placing them before the same Bench. There can be no gainsaying that one of the foremost facets of law is uniformity in approach as well as the verdict. Whilst two Benches have upheld the stand of the MCD, three other Benches have given their imprimatur to the view of the Industrial Tribunal approving thereby the stance of the Workmen.

6. Learned counsel for the Workmen has submitted that before one particular Bench, Justice Hima Kohli, the matter

was heard and decided in the absence of the Workmen. Even though the Workmen are responsible for this default, their learned counsel contends that all the relevant facts were not brought to the notice of the Bench and hence the verdict is in favour of the MCD. In particular, it has been brought to our notice that truncated documents have been filed by the MCD in order to give a distorted version to the Court. It was in this regard that our attention was attracted to the fact that in the Appeals filed on behalf of the MCD, the complete documents pertaining to "Item No.11 – Uniform pay scale of posts of Masons/Carpenters/Painters/Fitters etc." has not been filed. This deficiency or omission has been corrected by the Workmen by filing before us the complete document. They rely on the following page of Item No.11 which has been omitted in the Appellants' rendition on pages 85 and 86 of the Appeal:-

Rectification in the pay scale in Establishment Schedule was made:

Besides above, an Award passed in the matter of MCD Vs. Sri Kishan was challenged in the High Court and rectification made in the pay scale in Establishment Schedule was placed before the Hon'ble Justice Geeta Mittal in Delhi High Court through Sh. Gaurang Kanth Municipal Advocate engaged in this matter by Ex. Engineer (Elect.)-II.

Matter was come up for hearing on 6-1-2006 but **the Hon'ble Judge was not convinced with this**

amended order after expiry of 23 years and was in view of imposing cost of Rs.50,000/- on MCD. As per report of Ex. Engineer (Elect.)-II, matter was withdrawn from the High Court of Delhi and after getting the advice of DLO (HQ)/CLO, Award was implemented.

There were number of Awards already implemented and recently are being implemented. Under these circumstances there is no other alternative left with the department except to implement the following Awards as :-

- (a) Similar Awards have been implemented.
- (b) No recovery from the Workman granted pay scale of Rs.260-400 in place of Rs.210-270 through Awards can be made at this stage.
- (c) Non-implementation of Award will amount prosecution against management.
- (d) Matter for non-implementation of Award is being heard by the Hon'ble High Court of Delhi in the matter of Municipal Hospital Employees Union Vs. Labour Commissioner, GNCT and others in CWP No.4417/1996.
- (e) Commissioner, MCD has appeared in this matter in the High Court and directions have been given for implementation of Awards as early as possible.

Details of New Awards to be implemented :- (Grant of pay scale Rs.260-400)

S.No.	ID No.	Title of the case
1.	9/2001	Sh. Om Prakash Vs MCD
2.	121/2003	Sh. Babu Lal s/o Sh. Ganga Ram Vs MCD
3.	125/2003	Sh. Mahipal S/o Sh. Umeda Vs. MCD

4.	124/2003	Sh. Mali Ram S/o Sh. Chokha Ram Vs MCD
5.	123/2003	Sh. Panna Lal S/o Sh. Ram Swaroop Vs MCD
6.	122/2003	Sh. Raghunath S/o Sh. Dayal Ram Vs MCD
7.	127/2003	Sh. Ram Kishan S/o Sh. Nanak Chand Vs MCD
8.	31/2003	Sh. Ram Swaroop S/o Sh. Rati Ram Vs MCD
9.	3/2001	Sh. Mahboob Khan Vs MCD
10.	98/2003	Sh. Wahid S/o Sh. Karimuddin Vs MCD
11.	46/2003	Sh. Rafiq Ahmed S/o Sh. Gulsher Ahmed Vs MCD
12.	34/2001	Sh. Shan Mohd. S/o Sh. Munshi Ram Vs. MCD
13.	6/2001	Sh. Budh Ram Vs. MCD

It is proposed that administrative approval for implementation of these Awards **and any Award received in future be accorded.**

Submitted please.

7. We also record that the following portion of Item No.11 is completely illegible in the Appeal Paper Book, imparting considerable weight to the Workmen woes that the MCD has made a vain effort to mislead the Court:-

(ii) Resolution No.105 of the Ad hoc (Appointments, Promotions, Disciplinary & Allied Matters) Committee dated 12.2.2007.

Resolved that the case be routed through the Standing Committee.

(iii) Resolution No.643 of the Standing Committee dated 22.2.2007.

Resolved that it be recommended to the Corporation that the proposal of the Commissioner in his letter No.F.33/Engg./1751/C&C dated 8-1-2007, duly forwarded by the Ad hoc (Appointments, Promotions,

Disciplinary & Allied Matters) Committee vide its Resolution No.105 dated 12.2.2007, be approved.

8. We had summoned the Chief Law Officer of the MCD to make clarifications on the doctoring of documents as well as to ascertain on whose authority the present Appeals have been filed, which are palpably contrary to the Commissioner's Recommendations as well as to the decision of the MCD. The situation is confounded for the reason that several workmen, identically placed to those before us in these Appeals, have been placed in the pay scale of ₹ 260-400/- as further revised/increased from time to time. An ingenious explanation has been proffered by learned Senior Counsel for the MCD. This is that in most of the cases where similarly placed workmen were fitted in the pay scale of ₹ 260-400/-, the MCD was placed in a precarious legal position. For example, Justice Gita Mittal, (who has eventually not passed any of these orders appealed against before us), had expressed her intention of imposing punitive costs on the MCD because of its prevaricating and discriminatory action; or because the execution proceedings had come to a critical stage; or because senior officers of the MCD had been requested to appear in Court so as to enable the Court to ascertain the actual stance of the MCD. Adhocism, discrimination etc., an anathema so far as

a model employer such as the MCD is concerned, is writ large. It is evident to us that the MCD persists on wasting and exhausting scarce judicial time in each and every litigation rather than assuming its responsibility of independently arriving at a fair and legal decision.

9. We have already mentioned the argument made by learned counsel for the Workmen that the distinction between Senior Mason, Senior Carpenter, Senior Fitter and Senior Painters exists on paper only, and that too relatively recently, that is, circa 2005. Learned counsel has accentuated the fact that not a single document exists on the judicial record witnessing the appointment of any of the employees/workmen as Senior or Junior Masons/Carpenters/Painters/Fitters or promoting some Workmen to the Senior level. We are indeed not a little surprised that the MCD has sought to correct, after a long lapse of twenty three years, an alleged printing mistake depicting the pay scale of Masons/Carpenters/Fitters/Printers in the pay scale of ₹ 260-400/- in place of ₹ 210-270/-. The absurdity of this defence, it appears from the records, is what prompted Justice Gita Mittal to express the opinion that costs of ₹ 50,000/- deserved to be imposed on the MCD in each litigation.

10. We are of the opinion that the dichotomy of promotional level and entry level of Masons/Carpenters/Painters/Fitters, even if it existed on paper at the time of the employment/regularization of the Workmen, was never implemented by the MCD. So far as workmen before us are concerned, there is no evidence that at the time of their regularisation any such distinction existed amongst the employees. In LPA No.126/2010, the MCD has sought to assail the orders of the Hon'ble Single Judge who had affirmed the Award/Reference of the Presiding Officer, Industrial Tribunal-II, Delhi. The contention is that the learned Single Judge erred in holding that no material had been placed by the Workmen before the Labour Court pertaining to the Recruitment Rules. An independent, rather than the truncated reading made by learned Senior Counsel for the MCD of the Order, makes it clear that the learned Single Judge had noticed the absence of any material placed by the MCD to show till what date the Recruitment Rules remained in existence.

11. As already noted above, the stance of the MCD is that the two categories were merged on 5.3.2007 with effect from 1.1.1996. We reiterate that there is no material on record, at least nothing has been brought to our notice by learned Senior Counsel for the MCD, that this categorisation was actually in

existence amongst the employees/workmen before that date, and this division has unilaterally been devised by the MCD. In other words, we are satisfied that the employees/workmen were, for all intents and purposes, treated in the same manner so far as wages are concerned, that is, as Masons/Carpenters/Painters/Fitters.

12. Annexure R-7 pertains to Item No.2450 at pages 284-285 and is significant for two reasons – firstly because it takes cognizance of revision of scale of pay of skilled workers in the CPWD on the basis of an Award given by the Board of Arbitration by which scale of pay of ₹ 260-400/- was granted in lieu of ₹ 260-350/- and secondly for the reason that there is no mention of the alleged ‘senior category/cadre’ which was entitled to pay scale of ₹ 260-400/- as against ₹ 210-270/-.

Annexure R-7 reads thus:-

Item No. 2450 : **Revision of pay scales of skilled workers from 260-350 to 260-400**

Letter No. F.33/5888/C&C dated 19.5.1982

Whereas the skilled workers like mason, painter, carpenter etc. still getting the pay scale of 260-350 in the Municipal Corporation of Delhi.

Whereas the scale of pay of 26 categories of the skilled workers has been revised to 260-400 in lieu of 260-350 on the basis of Award given by the Board of Arbitration (JCM) w.e.f. 1.3.1973 by the Ministry of Works and Housing.

Whereas the Ministry of Works & Housing vide its letter No. 20/4/71-WCSII dated 5.3.1977 (copy enclosed) has decided as special case to agree to the revised scale of pay Rs.260-400 has been implemented w.e.f. 1.3.1973 and

Whereas the scale of pay revised by the Central Government from time to time are followed by the Corporation.

This meeting of the Standing Committee, therefore resolves that the scale of pay of 26 categories of skilled workers in the Municipal Corporation of Delhi be revised from 260-350 to 260-400 w.e.f. 1.3.1973.

This is a case for revision of pay scales of skilled workers from 260-350 to 260-400. The Central PWD vide their orders No.20/4/71-WCSII dated 2nd Feb. 1977 decided to increase the scales in view of the award given by the Board of Arbitration (JCM).

The Engineering Department is following the norms of CPWD/Delhi Admn./PWD and all the scales applicable to the workers in CPWD/Delhi Admn./PWD are being implemented in the department. There is also an understanding with the labour unions that whenever there is change in the scales in CPWD/Delhi Administration/PWD they will automatically become applicable to the workers of the Engineering Department. This has been done from time to time whenever such orders have taken place.

The categories involved in the Engineering Department are:

1. MASON
2. CARPENTER

3. PAINTER
4. FITTER
5. BLACK SMITH
6. OPERATOR
7. MOULDER
8. TURNER
9. WELDER
10. WIREMAN GRADE-I
11. MECHANIC SETTER
12. ELECTRIC MISTRY
13. ELECTRIC MOTOR MECHANIC

It is, therefore, recommended that the pay scales of the skilled workers of the Engineering Department be revised from 260-350 to 260-400 w.e.f. 1.1.73 notionally to the said categories of skilled workers in position on or before 1.3.73 and the actual benefit in terms of arrears of pay etc. would accrue to them only with effect from 1.3.1973.

C.A. has concurred in the proposal.

The case is put up to the Commissioner exercising the powers under Section 490(2) (b) of the DMC Act, 1957 to approve the above recommendations.

(ii) Decision No.2050/Stg. Dated 22.5.1982

The proposal contained in Commissioner's letter No.F33/5888/C&C dated 19.5.1982 is recommended to the Commissioner exercising powers of the Corporation for approval.

Item No.2450

As recommended by the Commissioner exercising the powers of the Standing Committee vide decision No.2059/Stg. Dated 22.5.82 the proposal contained in

Commissioner's letter No. F.33/5888/C&C dated 19.5.1982 is approved.

13. The argument of learned Senior Counsel for the MCD to the effect that the Workmen have not challenged the entry level and promotional level distinctions is obviously fallacious for the reason that the MCD has failed altogether to produce any evidence that such categorisation existed at the relevant time, or was ever implemented.

14. We have already made a mention of Item No.11 which dealt with the Commissioner's letter dated 8.1.2007 and has, as Annexure-A, the letter of the Commissioner dated 12.7.1982 which fails to make any distinction between the so-called entry level and promotional level in the category of Masons/Carpenters/Painters/Fitters. This belies the existence of two separate categories sought to be introduced by the MCD much later on as a defence to the demands of the Workmen. In Item No.11, after referring to the two said alleged categories of senior and junior, it has specifically been noted that – "So far, various such awards have already been implemented under advice of CLO and some of the awards are (sic.) have also created a disparity on pay scales of workers of the "Junior" Category itself. Under the circumstances, it will be in the interest of MCD, that the existing "Senior" and "Junior" grades

of the aforesaid five "Skilled" categories of the Engineering Department are merged into one grade". Keeping in perspective that the so-called senior and junior grades were not implemented for twenty three previous years, reliance by the MCD on the letter dated 9.5.2007 can be of no substance.

15. Learned Senior Counsel for the MCD has placed reliance on an Affidavit of the Administrative Officer, Engineering MCD dated 14.9.2004, the contents of which are reproduced for facility of reference:-

1. That I am presently posted as Administrative Officer, Engineering MCD, Town Hall, Delhi-6 and therefore well conversant with facts of the case and has been authorized to depose on behalf of the Management, MCD.
2. That the applicant was initially engaged as D/w on or about 1973. He was regularized as Carpenter w.e.f. 1.4.80 as per phased policy of the Corporation.
3. That the present claim has been filed after a long delay and no reason whatsoever has been given for the delay and therefore the present claim deserve dismissal on this ground.
4. That the Management MCD adopts the pay scales recommended by various pay commissions and approved by the Corporation (Elected Body). The concerned employee has been regularized in accordance to the Recruitment Rules and the pay scale recommended by the Pay Commission.

5. That the Recruitment Rules for the post of Carpenter and for the post of Senior Carpenter are enclosed herewith.

6. That no junior to the applicant has been regularized before the concerned employee nor any other employee of the same category as that of the applicant has been given the pay scale claimed by the applicant in the present dispute.

7. That the MCD is not bound to the recommendation and the pay scale recommended by CPWD or any other body or organization.

8. That Union of the applicant is not recognized by the Management MCD nor the office bearers of the Union are authorized to contest this case on behalf of the applicant as claimed. The applicant is not member of the Union and the applicant be put to strict proof of its contents.

9. That an award was passed by this Hon'ble Court and the copy of the same is enclosed herewith.

10. That similarly various awards has been passed by the Hon'ble Court of Sh. N.K. Gupta, Presiding Officer, Industrial Tribunal No.1, and copies of some of the award are enclosed herewith.

16. In this regard, paragraph 2 makes it clear that the regularisation was as per the "phased policy of the Corporation". Paragraph 5 is a prevarication inasmuch as it does not state from which date the Recruitment Rules were in operation, if at all. It does not specifically state the existence or adherence to the so-called promotional/senior level and

junior/entry level scales of pay. So far as paragraph 2 is concerned, it should have been categorically stated that the regularisation was carried out as per Recruitment Rules; this would have been so stated if the Recruitment Rules were, in fact, implemented.

17. Learned counsel for the Workmen has taken us through the Schedule of "Establishment -1997-98" of the MCD. It has been emphasised that this Schedule does not postulate or contemplate the two categories or classes sought to be created by the MCD before the Industrial Tribunal. There is no denial that in category 'C' carrying the pay scale of ₹ 950-1500/-, which corresponds to ₹ 260-400/-, there is no mention of Senior Masons/Carpenters/Fitters in the Engineering Department. This is also the position in the Schedule of Establishment 2004-2005 of the MCD.

18. It is indeed bewildering as to why the MCD has filed Appeals or is resisting Appeals filed by the Workmen in the face of their own Recommendations to the effect that – "It is proposed that administrative approval for implementation of these Awards and any Award received in future be accorded".

19. It is in this analysis we hold that in actual practice the MCD did not maintain a Senior/promotional level in contradistinction to a Junior/Entry level. Accordingly, there was

no justification for regularising Workmen/employees in the scale of ₹ 210-270/-. In the event of the MCD's withdrawal or grant of the higher scale of ₹ 260-400/- to Workmen/employees identically placed to those before us, there is no justification for firstly the creation of and thereafter the perpetuation of this discriminatory practice. Obviously, this is what prevailed upon the Secretary (Labour) to make a Reference to the Presiding Officer, Industrial Tribunal-II, Delhi.

20. These Appeals and Writ Petitions along with pending applications are disposed of with a direction to the MCD to treat the Workmen/Employees as having been regularised in the pay scale of ₹ 260-400/- with effect from 1.4.1980. In other words, they will be entitled to arrears of pay and other benefits for the period 1.4.1980 to 1.1.1996 if they were recruited by then. As we have already noted, the MCD has already granted all the benefits to the Workmen/Employees with effect from 1.1.1996. For removal of doubts, we have prepared this Table:

CASE NAME	APPEAL NO.	PETITION NO.	DESIGNATION OF WORKMEN	DECISION	DECIDED BY
MCD VS ABID ALI	LPA126/10	WP(C) 11378/09	CARPENTER	DISMISSED	S.N.AGGARWAL,J
MCD VS JAGDISH	LPA 129/10	WP(C)603/00	PAINTER	DISMISSED	MANMOHAN,J
MCD VS RAJ KUMAR	LPA 118/11	WP(C)5742/08	FITTER	DISMISSED	S.N.AGGARWAL,J
MCD VS NARAIN SINGH	LPA 120/11	WP(C)5745/08	MASON	DISMISSED	S.N.AGGARWAL,J
MCD VS VED PRAKASH	LPA 121/11	WP(C)5747/08	FITTER	DISMISSED	S.N.AGGARWAL,J
MCD VS VED PRAKASH	LPA 122/11	WP(C)5746/08	FITTER	DISMISSED	S.N.AGGARWAL,J
MCD VS RAMJEET	LPA 119/11	WP(C) 12978/09	FITTER	DISMISSED	S.N.AGGARWAL,J

MCD VS ANOOP SINGH	LPA 117/11	WP(C)8102/09	CARPENTER	DISMISSED	KAILASH GAMBHIR,J
MCD VS TAJADUKE KHAN	LPA 204/10	WP(C)522/10	FITTER	DISMISSED	S.N.AGGARWAL, J
MAM BAKSH & ORS VS MCD	LPA 365/11 LPA 368/11 LPA 369/11 LPA 370/11 LPA 371/11 LPA 372/11 LPA 373/11 LPA 374/11 LPA 375/11 LPA 376/11 LPA 377/11	WP(C) 166/00 WP(C) 524/00 WP(C) 527/00 WP(C) 531/00 WP(C) 761/00 WP(C)2379/00 WP(C)7673/00 WP(C)6993/01 WP(C)7530/01 WP(C) 148/02 WP(C) 821/03	MAM BAKSH - CARPENTER MOHD. SHARIF - CARPENTER NATHU RAM - MASON RAM KUMAR - MASON RASHID - MASON PURAN CHAND - FITTER RAZAK - MASON NANAK - MASON GANESH DASS - FITTER DEVKI NANDAN - PAINTER JAI BEER - CARPENTER	ALLOWED	HIMA KOHLI,J

21. The Workmen shall be entitled to costs of ₹ 5,000/- in each of the Appeals and Petitions.

(VIKRAMAJIT SEN)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

May 31, 2011
tp