

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

Date of decision: 13th May, 2011

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W.P.(C) 11346/2009

MUNICIPAL CORPORATION OF DELHI Petitioner

Through: Ms. Saroj Bidawat, Advocate

Versus

RAM KISHAN

..... Respondent

Through: None.

AND

**W.P.(C) Nos.11366/2009,11369/2009, 11599/2009, 11602/2009,
11612/2009, 11623/2009, 8714/2010, 8716/2010, 8717/2010 &
48/2011**

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers 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

RAJIV SAHAI ENDLAW, J.

1. These petitions are taken up together for consideration being against identical awards of the same Industrial Adjudicator on identical reference. Notice of each of the petition was issued and the respondents served. The presence of the counsel for the respondents is recorded in a number of petitions and counter affidavits have also been filed by the respondents in a number of petitions. All the writ petitions were listed before this Bench on 27th April, 2011 when none appeared for the respondent workmen. The contention of the counsel for the petitioner MCD was noted and the matter adjourned to 4th May, 2011 with direction for listing with notation in the cause list of 'Notice of Default' to counsel for the respondent workmen. In spite of matters being so listed on 4th May, 2011, none appeared for the respondent workmen on that day also and the hearing was adjourned for today. Today also none has appeared for the respondent workmen. The respondent workmen are proceeded against *ex parte*. The counsel for the petitioner has been heard and the counter affidavits filed by the respondent workmen in some of the petitions have been perused.

2. The reference to the Industrial Adjudicator was as follows:

“Whether the demand for overtime wages over and above his entitlement as per Circular No.D/Edu-IV/HQ/97/1568 dated 19.03.1997 of MCD for working on weekly holidays gazetted holidays and casual leave period to Sh. Ram Kishan S/o Late Sh. Prithi Singh is justified and if so from which date and what directions are necessary in this respect?”

3. Each of the respondent workmen is working as a Chowkidar in Municipal Schools. It was the case of the respondent workmen before the Industrial Adjudicator that they were, though liable to discharge duty of eight hours only every day but were on duty 24 hours and not being paid any overtime for the extra work and not even being given any holidays notified from time to time; that they were entitled to overtime wages for 16 hours extra duty every day from the date of initial appointment onwards. The petitioner MCD contested the claim of the respondent workmen by pleading that vide decision dated 15th March, 1997 published in the Circular dated 19th March, 1997 (supra), the Chowkidars in Municipal Schools were entitled to overtime allowances of the maximum of 50 hours every month; that the normal duty hours of the Chowkidar were 10 hours a

day and they were entitled to 24 hours rest in a fortnight; that no overtime allowance would be admissible for their working on Sunday and holidays but compensatory leave would be granted in lieu thereof; that in accordance with the decision aforesaid each of the respondent workmen was receiving ₹625/- per month as over time allowance.

4. The Industrial Adjudicator has held that from the Circular dated 19th March, 1997, it stood proved that the Chowkidars were entitled to overtime allowance subject to the maximum of 50 hours in a month; that though the petitioner MCD claimed to be paying ₹625/- per month against the said overtime allowance of 50 hours in a month but without disclosing its basis of calculation; that for up to the maximum of 50 hours of overtime in a month as per the Circular aforesaid, overtime charges were to be calculated/computed at the prevalent basic pay of the respondent workmen with effect from 1st January, 1997.

5. The Industrial Adjudicator accordingly directed the petitioner MCD to compute the overtime charges for 50 hours every month on the basic pay of the workmen and to pay the arrears, if any, so due towards the

respondent workmen after excluding the amount already paid to the respondent workmen till date. MCD was also directed to give the workmen the statutory holidays and compensatory leave as per Circular dated 19th March, 2007.

6. The counsel for the petitioner has rightly urged that while the reference was to adjudicate the claim of the respondent workmen for overtime wages over and above the entitlement under Circular dated 19th March, 1997 but the Industrial Adjudicator has instead of deciding whether the respondent workmen were performing the overtime over and above 50 hours in a month and if so at what rate they should be paid therefor, has made the award of the amount payable for the said 50 hours of overtime. It is contended that no dispute as to the rate of overtime as per the Circular aforesaid was referred for adjudication and thus the award is beyond reference and liable to be set aside. Reliance in this regard is placed on:

- (i) ***State Bank of Bikaner & Jaipur Vs. Om Prakash Sharma***
(2006) 5 SCC 123.

- (ii) ***Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd.*** 2009 (113) DRJ 620.
- (iii) ***Delhi Transport Corporation Vs. Raj Pal*** 132 (2006) DLT 681.

each laying down that the award of the Industrial Adjudicator beyond reference is liable to be set aside in exercise of powers of judicial review.

7. The respondent workmen in the counter affidavits filed have not denied the aforesaid plea, though have justified the payment of overtime wages to which they are entitled to as per the Circular also, at the rate awarded by the Industrial Adjudicator.

8. There is merit in the contention of the petitioner MCD. The dispute even if any as to the rate of overtime wages to which the respondent workmen were entitled to as per the Circular dated 19th March, 1997 was not referred for adjudication. The Industrial Adjudicator has no inherent power and acquires jurisdiction to adjudicate only what was referred to

him. As aforesaid, what has been answered was not referred and what has been referred has not been answered.

9. The award of the Industrial Adjudicator impugned in these petitions thus cannot be sustained and have to be necessarily set aside and are hereby quashed. However, in the absence of any material / finding on record, this Court is incapable of modifying the award. The matters thus have to be remanded to the Industrial Adjudicator for adjudication of the reference. It is clarified that the Industrial Adjudicator is required to in the reference answer the following questions:

- (i) Whether the respondent workmen are entitled to wages / emoluments for overtime over and above 50 hours in a month and if so to what extent and at what rate.
- (ii) Whether any of the respondent workmen have indeed worked overtime over and above 50 hours in a month and if so, of how many hours.

- (iv) Whether the respondent workmen are entitled to any arrears of overtime aforesaid and if so to how much.

10. The petitions are accordingly allowed. The awards of the Industrial Adjudicator are set aside as beyond reference. The matters are remanded to the Industrial Adjudicator. The parties to appear before the Industrial Adjudicator on 20th July, 2011. If the respondent workmen fail to appear, the Industrial Adjudicator shall serve them with the notice of remanded proceedings.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

May 13, 2011
'gsr'