

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

Judgment delivered on: 23rd September, 2014

+ W.P.(C) No.2756/2011

MCD

..... Petitioner

Represented by: Ms. Mini Pushkarna, Central
Government Standing Counsel
and Ms. Yoothica Pallavi,
Advocate.

Versus

MAHENDER PRATAP SINGH

..... Respondent

Represented by: Mr. Varun Prasad, Advocate for
Respondent No.6.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

1. Vide the present petition, petitioner/Municipal Corporation of Delhi (MCD) has assailed the award dated 06.02.2010, whereby the learned Industrial Tribunal qua issue No. 2 has held that the payment of second ACP to workman/respondent in the pay scale of Rs.4500 to Rs.7000/- w.e.f. 09.08.1999 with all consequential benefits is justified. Accordingly, workman/respondent is entitled to this scale with all consequential benefits w.e.f. 09.08.1999.

2. The grounds urged in the present petition are that the post of Fitter is an isolated post and does not have any promotional hierarchy in the

Horticulture Department of MCD, in which the respondent/workman was working. Therefore, in accordance with the First Schedule of Gazette Notification dated 30.09.1997 of Ministry of Finance (Department of Expenditure), respondent was granted Assured Career Progression (ACP) and his pay scale was revised time to time as per his entitlement.

3. It is further averred that there is no promotional post of Head Fitter in the Corporation. Presently the post of fitter in the pay scale of Rs.3050 – 4590 is an isolated post in the Horticulture Department of the Corporation and no post of Mechanic exists in the said Department. However, the learned Tribunal has wrongly relied upon the Rules and Regulations of the Erstwhile Fire Department of the petitioner and granted the award in favour of the respondent/workman by holding that the respondent/workman was entitled to the pay scale of Rs.4000-6000 in the first ACP and to the pay scale of Rs.4500-7000 in the second ACP, whereas, the respondent/workman was working as a Fitter in the Horticulture Department.

4. Further averred, one post of fitter was created on *ad hoc* basis for a period of six months only in the year 1983 in the pay scale of Rs.380 – Rs.500, on which one Sh. Sultan Singh was appointed. Thereafter, this post was automatically abolished, thus, none has been appointed on the post of Head Fitter after the implementation of the ACP Scheme. However, while granting the award, the learned Tribunal ignored the aforementioned fact and also not considered the evidence of the petitioner that the post of Fitter was an isolated post in the Horticulture Department.

5. It is also averred that the claim of the respondent/workman was barred by delay and laches as he was superannuated on 30.12.2003 and the industrial dispute was raised in the year 2008, i.e., five years after his superannuation.

6. Ms. Mini Pushkarna, learned counsel appearing on behalf of the petitioner submitted that the Fire Department was separated from the petitioner's Department in the year 1994 and, therefore, the Rules and Regulations of the said Department are not applicable in the present case.

7. On the other hand, Mr. Varun Prasad, learned counsel appearing on behalf of the respondent/workman submitted that as per the ACP Scheme, if the post is a promotional one, then a person is entitled to the scale of that promotional post and if it is an isolated post, then he shall get the scale prescribed in the ACP Scheme.

8. To support his submissions, learned counsel relied upon para 7 of the conditions for grant of ACP Scheme, wherein recorded as under:-

“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/comm.) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of

Expenditure). For instance incumbents of isolated posts in the pay scale S-4, as indicated in Annexure-II will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of the isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original lever (pay scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic basis'. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only.”

9. Mr.Prasad further submitted that in view of the above, learned Tribunal has rightly granted second ACP as per the chart appended to the ACP Scheme as the first ACP was given treating the respondent/workman as Fitter with the pay scale of Rs.4000-6000, having promotional post of Head Fitter/Mechanic.

10. Mr. Prasad submitted that the first condition of ACP Scheme is that it is merely placement in the higher pay scale and does not amount to actual functional/regular promotion, i.e., the person is not entitled to perform the duty on the promotional post.

11. In support of his submissions, learned counsel relied upon para-1 of the conditions for grant of benefit of ACP Scheme, as under:-

“1. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits (through

financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.”

12. Mr.Prasad submitted that as per ACP Scheme, if an employee has completed 24 years of regular service with or without a promotion, the second ACP shall be granted directly. But if he has completed more than 12 years and less than 24 years of regular service, in such an eventuality, he would be granted first ACP immediately and the second ACP after completion of 24 years of regular service. In the case in hand, the respondent had not earned any promotion and has completed 24 years of regular service, therefore, he was directly granted the second ACP w.e.f. 09.08.1999 by the learned Tribunal.

13. Further submitted, ACP Scheme shall be purely personal to the employees and will have no relevance to the seniority.

14. To support his submissions, learned counsel for the respondent/workman relied upon the case bearing **W.P.(C) No.567/2011** titled as **MCD Vs. Prakash Chand**, decided on 08.09.2014, wherein this Court held that the first ACP to the post of Fitter after 12 years of regular service is that of Head Fitter/Mechanic in the pay scale of Rs.4000-6000 as it is a promotional post.

15. I have heard the learned counsel for the parties.

16. On perusal of the impugned Award, it is revealed that AR of the Management argued before the learned Tribunal that the

respondent/workman was working as Fitter in Horticulture Department of MCD. Since there was a hierarchy of promotion from the post of Fitter to Head Fitter, an employee was promoted as Head Fitter or Mechanic. In the implementation of ACP Scheme, the employee is entitled to get the benefit of ACP in the next pay scale if the hierarchy of post is there. Therefore, the first ACP should have been given to the workman in the pay scale of Rs.4000-6000 and second in pay scale of Rs.4500-7000.

17. Moreover, in his examination-in-chief by way of affidavit, MW1 Sh.K.D.Sharma admitted that the respondent/claimant has already been given benefit of upgradation under the ACP Scheme of Government of India in the pay scale of Rs.4000-6000.

18. It is important to note that the copy of order regularizing the workman as Fitter in the pay scale of Rs.260-400 has been proved as Ex.MW1/1, copy of circular containing recommendations of Vth Pay Commission as adopted by MCD has been proved as Ex.MW1/2 and copy of relevant pages of service book of workman has been proved as Ex.MW1/3.

19. Hence, question arose for consideration before the learned Tribunal whether there is hierarchical superior post of Fitter?

20. The Management admitted that it had created post of Head Fitter vide office order dated 01.01.1983, Ex.WW-2, pursuant to which Sh. Sultan Singh was promoted as Head Fitter, though on *ad hoc* basis. It is further admitted that pay scale of Head Fitter was Rs.4,000 – 6,000/- and post of Mechanic also carries the same pay scale.

21. The workman has brought on record copy of the recruitment regulation for the post of Mechanic/Motor Cycle Mechanic, wherein it is mentioned that for promotion as Mechanic; Fitter with ten years regular service is eligible.

22. In other words, on the basis of the aforesaid Rule, it is clear that post of Fitter carries pay scale of Rs.260–350/- (revised to Rs.3050–4590), whereas post of Mechanic and Head Fitter carries pay scale of Rs.380 – 500 (Rs.4000 – 6000).

23. Fact remains that one Sultan Singh was promoted as Head Fitter in the pay scale of Rs.350-500, copy of the order is Ex.WW-2. Nothing has been placed on record that post has been abolished thereafter. Therefore, for the purpose of promotion, it cannot be said that there was no promotional hierarchy for the post of Fitter to the post of Head Fitter. Therefore, arguments of Ms.Pushkarna for the Management/MCD that there was no promotional hierarchy to the post of Fitter or that it is an isolated post is not borne out of record.

24. In his affidavit, workman/Mahendra Pratap Singh deposed that he was initially employed as Regular Fitter (skilled) w.e.f. 01.09.1966 in the pay scale of Rs.110-155 revised from time to time and after implementation of Vth Pay Commission, he was granted pay scale of Rs. 3050-4590. He also deposed that though he completed 24 years of service on 06.08.1999 but did not get any promotion, however, granted upgradation in the pay scale of Rs.4000-6000 instead of Rs.4500-7000.

25. As per ACP Scheme Ex.WW-1 dated 09.08.1999, if there is hierarchy of post, ACP will be given in next higher pay scale in the hierarchy. However, if the post is isolated one, ACP will be given as per pay scales mentioned in Annexure-II annexed with Ex.WW-1. Accordingly, the learned Tribunal rightly held that since post of Head Fitter/Mechanic falls in hierarchy of promotional post from the post of Fitter, respondent/workman was entitled for first ACP in the pay scale of Rs.4000-6000.

26. Moreover, nothing has been placed on record that there is further promotional hierarchy from the post of Head Fitter/Mechanic. Therefore, hierarchy of the post of Fitter comes to an end on the post of Head Fitter/Mechanic. For the purpose of benefits of second ACP, pay scales mentioned in Annexure-II of ACP Scheme Ex.WW-1 are required to be looked into. Pay scale of Rs.4000-6000 is numbered as S-7. It has been held that workman was entitled for the first ACP in pay scale of Rs.4000-6000. Next pay scale S-8 is of Rs.4500-7000, therefore, workman is entitled for second ACP in pay scale of Rs.4500-7000 (S-8) from the date he had been given second ACP.

27. In view of the aforementioned facts, the learned Tribunal held that respondent/workman is entitled to second ACP in pay scale of Rs.4500-7000 from the date he had been given second ACP, i.e., 09.08.1999 and accordingly, decided issue No.2 in favour of the workman and against the Management.

28. In case of isolated posts, in the absence of defined hierarchical grades,

financial upgradation shall be given by the Departments concerned in the immediately next higher pay scales as indicated in Annexure-II which is in Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). The financial upgradation on a dynamic basis, i.e., without creating posts in the relevant scales of pay, has been recommended by the Fifth Central Pay Commission only for the incumbents of the isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay scale) when vacated.

29. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits through financial upgradation only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

30. In the case in hand, since respondent had not earned any promotion and has completed 24 years of regular service, therefore, the respondent/workman is entitled directly for the second ACP w.e.f. 09.08.1999. The ACP Scheme is purely personal to the employees and will have no relevance to the seniority.

31. Keeping in view the decision dated 08.09.2014 taken by this Court in the case bearing W.P.(C) No.567/2011 and the aforesaid facts, I am of the considered opinion that the post of Mechanic and Head Fitter is a promotional post from the post of Fitter and therefore, falls in the hierarchy

of the post. Moreover, the petitioner failed to produce any documentary proof or witness to the effect that the post of Head Fitter was abolished.

32. In view of above discussion, I find no discrepancy in the order dated 06.02.2010 passed by the learned Tribunal.

33. So far as the issue regarding the claim petition filed belatedly is concerned, the same has been dealt with by the learned Tribunal. While relying upon the definition of 'industrial dispute' prescribed under Section 2(k) of the Industrial Disputes Act, 1947, learned Tribunal correctly held that the present dispute is not barred on account of the fact that respondent/workman ceased to be an employee after his retirement as present dispute regarding grant of second ACP in higher scale relates to terms of employment for the period the respondent was in service of the petitioner. Hence, I find no merits in the submissions made by learned counsel on this point.

34. Accordingly, instant petition is dismissed with no order as to costs.

SURESH KAIT. J

SEPTEMBER 23, 2014

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