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

% *Judgment delivered on: 10th September, 2014*

+ W.P.(C) 3857/2013

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Represented by: Mr. Gaurang Kanth,
Mrs. Biji Rajesh and Mr. Abhay Pratap
Singh, Advs.

Versus

MORDWAJ AND ORS. Respondents
Represented by: Ms. Rekha Palli and
Ms. Garima Sachdeva, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner has assailed the impugned recovery certificate dated 08.04.2013 whereby an amount of Rs.86,21,464/-, for the period from 09.08.1999 to 31.12.2011, was issued against the petitioner.

2. Mr. Gaurang Kanth, learned counsel appearing on behalf of the petitioner submits that the reference before the Industrial Tribunal was as under:-

“Whether the workmen working in Horticulture Department to various Zones in category C are entitled to the benefits of ACP Scheme with effect from 09.08.1999 and if so, what directions are necessary in this respect?”

3. Learned counsel further submits that the impugned recovery certificate is beyond the reference allowed by the Industrial Tribunal. The respondents-claimants were not 'Choudharys' and not in the pay-scale of Rs.4,500/- to 7,000/-.

4. Vide award dated 07.02.2008, Id. Tribunal in Para 11 recorded as under:

“The adoption of the ACP Scheme by the MCD/Management is not been disputed by them. Once, the adoption of the ACP Scheme is not been disputed, the Management is duly bound to implement the same among their employees, so entitling them w.e.f 09.08.1999. So far the claim of the workmen that the Garden Choudharys be given the scale of Rs.4,500 – 7,000 after 12 years and Rs.5000-8000 after 24 years and 4000-6000 for the remaining categories, i.e., Fitters, Blacksmiths, Painters, Assistant Pump Operators etc. after 12 years and Rs.5000-8000 after 24 years are concerned, the same is without force, at this stage, for want of proper reference. The ACP Scheme is the benefit extended to the employees on the basis of their performance while on duty and the terms and conditions in the rule which is to be implemented by the management and the ACP Scheme ipso-facto does not create a new scale to a particular category. Therefore, on the basis of statement of claim and evidence on record of the parties, I hold that the workmen of the MCD are entitled to the benefits of the ACP Scheme as per notification Ex.MW1/1 from 09.08.1999. This issue is decided in favour of workmen.”

5. Mr. Kanth submits, on perusal of the afore-noted Para it reveals that the contention of the workmen was that they should be given the scale of Rs.4,500 – 7,000/- after 12 years, Rs.5,000 – 8,000/- after 24 years and Rs.4,000 – 6,000/- for the remaining category, i.e., Fitters, Blacksmiths, Painters, Assistant Pump Operators etc. after 12 years and Rs.5000-8000 after 24 years, however, the Ld. Tribunal opined that the same is without

force at this stage for want of proper reference. Thus the Ld. Tribunal has rejected the contention of the workman on the above-noted pay scales.

6. Vide Para 12 of the award, Ld. Tribunal directed the petitioner / Management to implement the benefit of ACP Scheme w.e.f 09.08.1999 as per the entitlement of its employees.

7. Being aggrieved, petitioner / Management challenged the aforesaid award which was disposed of by this Court vide order dated 04.11.2009 and passed order as under:

“I fail to understand what grievance the petitioner (MCD) could have against such an innocuous award directing it to implement the ACP Scheme notified by the petitioner itself vide notification dated 09.08.1999 (Exhibit MW-1/1). In view of the above, I do not find any merit in this writ petition which may call for an interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India. This writ petition, therefore, fails and is hereby dismissed in limine. The stay application is also dismissed.”

8. Being aggrieved further, the petitioner challenged the same in LPA 203/2011, which was dismissed vide order dated 19.09.2011, and observed as under:

“Thus, the only issue before the Tribunal was as to whether the working in the Horticulture Department in various zones in category ‘C’ are entitled to the benefit of ‘Assured Career Progression’ Scheme (ACP Scheme) w.e.f 9th August 1999. It is not in dispute that ACP Scheme was promulgated by the Central Government on 9th August, 1999. The issue, thus before the Tribunal was as to whether the MCD was also under obligation to implement this Scheme qua this category ‘C’ employees working in Horticulture Department. Interestingly, the MCD itself accepted this fact before the Industrial Tribunal

and conceded that the aforesaid Scheme was applicable to the said employees, w.e.f. 9th August, 1999. In fact, before the Tribunal, the workmen 'Garden Choudhary' had claimed specific pay scales, i.e., pay scales of 4500-7000 as first up-gradation after 12 years of service and pay scale of 5000-8000 as second up-gradation after completion of 24 years of service. The Tribunal refrained from going in the issue which particular pay scale is to be given and did not accede to the aforesaid contention of the workmen. The Tribunal simply answered the reference by stating that benefit of ACP was extended to the employees of the MCD and as per the said ACP Scheme employees who do not get promotion in their normal turn, were entitled to two up-gradation after completion of 12 and 24 years of service respectively. In spite of the aforesaid categorical award made by the Industrial Tribunal confining itself to the reference in question and answering the question which seven the MCD had conceded, the MCD chose to challenge the said award by filing writ petition. This writ petition has been dismissed by the Learned Single Judge of this Court on 4th November, 2009, inter alia, recording as under:-

"I fail to understand what grievance the petitioner (MCD) could have against such an innocuous award directing it to implement the ACP Scheme notified by the petitioner itself vide notification dated 09.08.1999 (Exhibit MW1/1). In view of the above, I do not find any merit in this writ petition which may call for an interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India. This writ petition, therefore, fails and is hereby dismissed in limine. The stay application is also dismissed.

2. *Notwithstanding the same, the present appeal is filed challenging the order of the Learned Single Judge. We acquiesce the sentiments and observations of the learned Single Judge, namely we fail to understand the grievance of the MCD in filing the writ petition or even the present appeal. The only argument raised by the learned Senior Counsel appearing for the appellant is that in the execution petition filed by the workmen, they are claiming specific pay scale to which they are*

not entitled to. When no particular pay scales are decided by the learned Tribunal we fail to understand what was the necessity to challenge the award passed by the Tribunal. In case the MCD perceived that particular pay scales claimed by the workmen in the execution proceedings are not available to the workmen, it is open to the MCD to contest those execution proceedings on its own merits and not to challenge the award of the Tribunal on such a ground.

This appeal is accordingly dismissed with costs quantified at Rs.25,000/-. This cost shall be paid to the Delhi Legal Services Authority.”

9. Thereafter, the respondents / workmen filed an application under Section 33 (C) (1) of the Industrial Disputes Act, 1947 wherein stated that the respondents / workmen are entitled to receive the difference from 09.08.1999 to 31.12.2011 in proper pay scale as per the category of Chaudhary’’ on first ACP as per the pay scale of Rs.4,500 – 7,000 and other ‘C’ Categories with pay scale of Rs.4,000 – 6,000/- in place of Rs.3,200 – 4,590/- and Second ACP of Rs.5,000 – Rs.8,000/- after 24 years. A chart of Rs. 86,21,464/- to this effect was annexed by showing the amount due to each workmen.

10. The petitioner filed reply to the aforesaid application, whereby stated that upon comparing the list filed by the workmen and list available with the Department, it was found that out of 28 persons, there were only 11 persons whose names were mentioned in the list available with the Department. In Para 6 of the reply, it was submitted that the petitioner was under the bonafide impression and belief that all the employees including the respondents / workmen have already got their respective benefits as available under the ACP Scheme. It is further stated that after the trifurcation of the MCD, employees have been segregated to different

corporations and zones and as such details thereof are not readily available. More so, respondents / workmen have simply made North Delhi Municipal Corporation and its Commissioner as a Party to the present petition whereas the different corporations have come into the picture as such without providing the details of the employees, their work place, designation, parentage, address is not possible for the petitioner to respond the same properly and effectively.

11. Vide letter dated 08.04.2013, Deputy Labour Commissioner (Central District), Govt. of NCT of Delhi, communicated to the District Collector Officer / Collector (Central District) whereby stated that the Municipal Corporation of Delhi through Commissioner, after trifurcation (North Delhi Municipal Corporation) through Commissioner Sh. S.P. Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi-110002, who is the management, Labour Court No. 1, Industrial Suit No. 70/2007 passed award dated 07.02.2008, accordingly, employees Mr. Mordwaj (petitioner herein) and 27 other are entitled for payment of Rs.86,21,464/- for the period from 09.08.1999 to 31.12.2011.

12. However, vide order dated 10.05.2013 Assistant Collector (III), Karol Bagh issued recovery certificate for an amount of Rs.86,21,464/-, hence the present petition.

13. Ld. Counsel appearing on behalf of the petitioner submits that the petitioner Mordwaj was appointed on 26.08.1978 on the post of Choudhary and was regularized on 14.05.1982 in the pay scale of Rs.260-6-290 EB-6-326 EB-390-10-400. Accordingly, first ACP was granted in the pay scale of

Rs.3,200 to Rs.4,900/- w.e.f 09.08.1999 and second ACP was granted on 26.08.2002 with pay scale of Rs.4,000 – 6,000/-.

14. Ld. Counsel has drawn the attention of this Court to the Office Memorandum dated 09.08.1999 regarding the Assured Career Progression Scheme for Central Govt. Civilian Employees, whereby in Para 6 and 7 the conditions for grant of benefit under the ACP Scheme is stated as under:

“6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

*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/common**) 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”*

15. Accordingly, as per Annexure-2, respondents / workmen were entitled, for pay in S-5 category, in the pay scale of Rs.3,050-75-3,950-80-4,590, accordingly, were given ACP Scheme in the category of S-6, i.e., in the pay scale of Rs.3,200-85-4,900/-.

16. Ld. Counsel further submitted that the pay scale of Chaudhary was Rs.260-400/- and the pay scale of Section Officer was Rs.425 – 700/- and qualifications for both the posts mentioned above were different as per their posts.

17. Ld. Counsel further submits that relief Under Section 33 (C) (1) of the Industrial Disputes Act is not available to the Execution Court so far as the award is concerned. However, the respondents / workmen have wrongly filed the execution petition under the said Section. Therefore, the impugned order dated 10.05.2013 has been passed without jurisdiction and deserves to be quashed.

18. To strengthen his arguments, Ld. Counsel has relied upon a case of ***D.S. Gupta and Company Pvt. Ltd. V. Labour Commissioner***, decided by this Court in CW 337/96 dated 17.09.2007 wherein in Para 5 it is held as under:

“In Civil Writ Petition No. 1264/95 – M/s. Calcom Plastics Private Limited vs. The Lt. Governor & Others, a Division Bench of this Court had occasion to consider the interpretation of Section 33 (C) (1) of the Act and the scope of power of the appropriate Government under that section. In the judgment dated 12th December, 1996 the learned Judges of the Division Bench summarized their conclusions as follows:

(i) Proceedings under Section 33-C(1) of the Act are in the nature of execution proceedings.

(ii) The appropriate Government has not been invested with powers of Labour Court or Industrial Tribunal to hold a formal enquiry.

(iii) In case the management raises bona fide dispute/s on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate Government has no right of adjudication of such dispute/s.

(iv) In case of bonafide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court / Industrial Tribunal.

(v) The appropriate Government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or malafide taken with a view to deprive the workman of the money due to him.

(vi) The appropriate Government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision Under Section 33-C(1) and is also required to make a speaking order giving reasons so that the aggrieved party – management or workman may seek judicial review of the decision of the appropriate Government in accordance with law.

19. On the other hand, Ms. Rekha Palli, Ld. Counsel appearing on behalf of the respondent submits that the petitioner failed to file reply to the Execution Petition before the Execution Court and if the petitioner wishes to

rely on these documents shown to this Court that has to be adjudicated by the Execution Court on filing reply to the execution petition.

20. Ld. Counsel appearing on behalf of the petitioner has disputed the argument of the Ld. Counsel and submits that respondents / workmen has wrongly filed the execution under Section 33 (C)(1) of the Industrial Tribunal Act and if a fresh petition under the proper provision is filed, they may file the response accordingly. Since, the benefits of ACP Scheme have already been awarded to the respondents, then beyond the award, execution does not lie.

21. With the consent of Ld. Counsels for the parties, order dated 08.04.2013 and demand notice dated 10.05.2013 is hereby set aside with liberty to the respondents / workmen to file their claim before the Tribunal regarding the pay scale claimed by them.

22. Needless to state that respondents / workmen may file their claim to this effect directly before the Industrial Tribunal without approaching the Labour Department for conciliation.

23. Accordingly, instant petition is allowed with liberty granted to the respondents.

CM. NO. 7176/2013

With the disposal of the instant petition, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

SEPTEMBER 10, 2014/jg