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

Judgment delivered on: 25th September, 2014

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W.P.(C) No.5034/2011

WORKMEN WORKING AS MALIES IN HORTICULTURE
DEPARTMENT, MCD TH: HOSPITAL EMPLOYEES UNION

..... Petitioners

Represented by: Mr.Rajiv Aggarwal, Advocate.

Versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Even on second call, appeared none on behalf of the respondent. Hence, this Court has decided to proceed with the matter.

2. The petitioners are workmen. By way of the present petition, the petitioners are seeking quashing of the impugned award dated 23.04.2009, passed by the learned Industrial Adjudicator in I.D.No.214/2006 with directions entitling the petitioners to Hospital Patient Care Allowance (in short 'HPCA') with retrospective effect, i.e., from the date, the petitioners are posting/working in the hospital under the control of the respondent Municipal Corporation of Delhi (MCD) alongwith all the arrears and consequential benefits.

3. The reference before the learned Tribunal was that whether the workmen who were working as Malis at RBTB Hospital, Hindu Rao Hospital, ID Hospital and other hospitals under the control of MCD are entitled to get the Patient Care Allowance (PCA).

4. Accordingly, the learned Tribunal framed the following issues on 19.03.2007:-

“1. Whether the dispute has been espoused by the union? If not, its effect.

2. Whether the workmen who are working as Malis at RBTB Hospital, Hindu Rao Hospital, ID Hospital and other hospitals under the control of MCD are entitled to get the Patient Care Allowance and if so, from which date and what directions are necessary in this respect?

3. Relief.”

5. The petitioners claimed that they have been working in the employment of MCD as Malis for several years and posted at different hospitals of MCD like RBTB Hospital, Hindu Rao Hospital and ID Hospital. They all are maintaining parks and lounges of the hospitals and deal with patients suffering from infectious diseases like Tuberculosis etc. As the workmen during their duties are involved in a risk of involvement with various infectious diseases, thus, they are entitled to HPCA in terms of office order dated 29.09.1999 issued by the Administrative Officer (Health) of MCD, however, the petitioners workmen have been denied for the said amount despite their repeated requests and reminders till date.

6. Mr.Rajiv Aggarwal, learned counsel appearing on behalf of the petitioners workmen has referred the memorandum dated 25.01.1988,

Annexure P-1, issued by the Ministry of Health & Family Welfare, Government of India, which was confirmed by the Director General of Health Services, Nirman Bhawan and the Secretary (Medical) of the Delhi Administration, grant of HPCA to Group 'C' and 'D' (Non-Ministerial) Hospital Employees including Drivers of Ambulance Cars, but excluding Staff Nurses, at the rate of Rs.80/- and Rs.75/- per month respectively w.e.f.01.12.1987, subject to the condition that no 'Night Weightage Allowance', if sanctioned by the Central Government, will be admissible to these employees working in the Central Government Hospitals and Hospitals under the Delhi Administration.

7. Mr.Aggarwal has drawn the attention of this Court to a circular dated 17.02.1989, Annexure P-2, issued by the Health Department, MCD, whereby the Standing Committee vide Resolution No.1641 dated 11.01.1989 passed in Item No.1316 granted HPCA to Group 'C' and 'D' (Non-Ministerial) Hospital Employees.

8. Moreover, Commissioner's letter No.F.33/Health/6989/C&C dated 26.12.1988 (mentioned in aforesaid Resolution) records that the Ministry of Health & Family Welfare vide their memorandum No. Z. 28015/68/87 -H dated 25.01.1988 has granted HPCA to Group 'C' and 'D' (Non-Ministerial) Hospital Employees including Drivers of Ambulance Cars at the rate of Rs.80/- and Rs.75/- per month respectively w.e.f. 01.12.1987, subject to the condition that no 'Night Weightage Allowance', if sanctioned, will be admissible to these employees working in the Central Government Hospitals and Hospitals under the Delhi Administration.

9. A clarification was sought from LNJP Hospital as MCD federally follows Delhi Administration pattern, who have also confirmed payment

of aforementioned allowance w.e.f. 01.12.1987 except Nursing Staff, Ministerial Staff, i.e., A.I./UDC/LDC/Stenographer.

10. Mr.Aggarwal submits that as per aforementioned circular dated 17.02.1989, there are about 2572 Group 'C' employees and 2346 Group 'D' employees of MCD engaged in various Medical Institutions. Hence, the financial implication will be about Rs.4,00,000/- per month and Rs.48,00,000/- per year, which will be met out from the existing budgeted provision. Accordingly, the Finance Department has concurred on the same. Thus, the matter was directed to be placed before the Standing Committee for grant of HPCA to Group 'C' and 'D' categories w.e.f. 01.12.1987 except Nursing Staff, Ministerial Staff, namely, JAO/UDC/LDC/Stenographers etc.

11. Mr.Aggarwal while drawing the attention of this Court to the office order dated 12.02.1993 passed by the Additional Dy. Commissioner, Health Department: HQ, MCD, submitted that vide aforementioned order, MCD enlarged the scope of Group 'C' and 'D' (Non-Ministerial) Employees excluding nursing personnel, working in dispensaries and polyclinics by granting PCA at the rate of Rs.70/- per month w.e.f. 01.04.1991.

12. It is pertinent to mention here that vide aforementioned order dated 12.02.1993, the Additional Dy. Commissioner has approved preponing of HPCA at the existing rate of Rs.80/- and Rs.75/- per month for Group 'C' and 'D' (Non-Ministerial) Hospital Employees respectively w.e.f. 01.04.1987 instead of 01.12.1987.

13. Despite that the learned Tribunal while deciding issue No.2, recorded that onus to prove this issue was on the workmen. The claim of

workmen is that they are entitled to HPCA in terms of office order dated 29.09.1999 issued by the Administrative Officer (Health), because they are working as Malis for several years, in various hospitals of MCD like RBTB Hospital, Hindu Rao Hospital etc. and are involved in a risk of involvement with various infectious diseases, while working in parks and lounges of said hospitals.

14. MW1 Shri Chander Pal admitted that Malis are maintaining parks and lounges in the hospitals. Further admitted that the patients suffering from infectious diseases like TB are admitted in the hospital and those patients sit in the parks if their health allows. Also admitted that Malaria Beldars come under the Health-Department. However, the said witness was not aware if HPCA is being given to the employees of Electrical Department but admitted that documents Ex.WW1/1 and WW1/2 do not contain words 'HPCA shall be given to those employees who are directly in touch with patients.'

15. Mr.Aggarwal submits that the learned Tribunal has presumed without any record from the cross-examination of MW1 that nothing could be extracted that Malis are entitled to HPCA. Malis who are working in MCD hospitals and other medical institutions are being paid 'Risk Allowance'. The learned Tribunal further presumed that if these workmen/Malis are entitled to HPA then they will have to forego their 'Risk Allowance'.

16. Mr.Aggarwal further submits that the petitioners workmen are entitled to receive HPCA as they are nowhere excluded from the said allowance by any of the circulars/orders either issued by the respondent MCD, or the Central Government. By all orders/circulars, all Group 'C'

and 'D' employees are covered except some of the staff mentioned therein. Admittedly, the petitioners workmen belong to Group 'D' category. Nowhere, it is mentioned that Malis are not entitled to HPCA.

17. It is submitted that in absence of contrary material, the learned Tribunal ought to have interpreted the circular/order or notification in favour of the workmen whereas the learned Tribunal failed to do so.

18. To strengthen his arguments, the learned counsel has relied upon the case of ***K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd. & Ors., AIR 1978 SC 474***, wherein the Apex Court held as under:-

"5. In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts, correct the balance-sheets and profit and loss accounts of the Central Workshop to the extent justified by the Act and the evidence and finish the list within three months of receipt of this order. The appeals are dismissed. No costs."

19. On perusal of the impugned award, it is revealed that the learned Tribunal has wrongly presumed that PCA is to be given only to those workmen who are in direct contact of the patients. Neither any circular nor any order, as discussed above, prescribe such criteria. Moreover, perusal of the orders/circulars evidently clarifies that all workmen belonging to Group 'C' and 'D' (Non-Ministerial) are entitled for HPCA and it is nowhere mentioned in any of the order or circular that only workmen, those who are in direct contact of the patients, are entitled for

grant of HPCA. Moreover, it is nowhere mentioned that workmen, those who are getting 'Risk Allowance', are not entitled to HPCA.

20. The scheme of PCA is awarded in lieu of helping the mankind.

The workmen who are working in the TB Hospitals, ID Hospitals etc., while performing their duties are involved in a risk of involvement with various infectious diseases, thus, they are getting 'Risk Allowance' as well as 'PCA', hence, the petitioners workmen (herein), being similarly placed are also entitled to HPCA in addition to the 'Risk Allowance'.

21. In addition, Non-Ministerial employees falling under Group 'C' and 'D' categories working in various hospitals of the respondent Management are getting HPCA/PCA, on the strength of aforementioned orders/circulars of the respondent Management. It is evident from the salary slip of Shri Krishan Kumar (Annexure P-16) working in the Malaria Department, Central Zone, that he received Rs.690 as PCA in the month of January, 2008.

22. Therefore, taking into considerations all the circulars and orders mentioned above and the submissions made by the learned counsel for the petitioners, I hereby set aside the impugned order dated 23.04.2009.

23. Consequently, the respondent MCD is directed to pay the petitioners workmen HPCA at the rate of Rs.75/- per month w.e.f. 01.04.1987, which was revised to Rs.150/- per month w.e.f. 01.08.1997 and again revised to Rs.695/- per month w.e.f. 29.12.1998 within a period of eight months from today.

24. I hereby make it clear that if the respondent has further revised the said allowance, the same shall be paid to the petitioners workmen. Interest at the rate of 6% *per annum* from the date amount become due

shall also be paid to the workmen.

25. Accordingly, the instant petition is allowed with no order as to costs.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 25, 2014
Sb/RS