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

% *Judgment delivered on: 1st September, 2014*

+ W.P.(C) 5699/2014

MUNICIPAL CORPORATION OF DELHI

(NOW NORTH DELHI MUNICIPAL CORPORATION) Petitioner

Represented by: Mr. Kumar Rajesh Singh, Adv.

versus

DARIYAB SINGH

..... Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. No. 14077/2014(for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **W.P.(C) 5699/2014**

1. Vide the instant petition, petitioner seeks quashing of the order dated 03.10.2013 passed by the Industrial Tribunal, Karkardooma Courts, Delhi in ID No. 117/2010.

2. The impugned award has been challenged on the ground that Ld. Tribunal failed to appreciate the fact that claim of the respondent / workman is not maintainable because he is seeking status of Garden Choudhary with retrospective effect.

3. Mr. Kumar Rajesh Singh, Ld. Counsel appearing on behalf of the petitioner submits that the promotion cannot be granted with retrospective effect. Moreover, the fact has been proved that the respondent / workman

had not worked on the post of Garden Choudhary prior to promotion to his post. Further, he was not entitled for promotion for the post of Garden Choudhary w.e.f 01.01.1989 because the post of Garden Choudhary is a promotional post and same is required to be filled up by conducting a trade test and only those who qualified the prescribed test are entitled to be promoted to the post as Garden Choudhary.

4. Mr. Singh further submits that in absence of qualifying in any trade test prescribed for the post, respondent / workman cannot be held to be entitled to the pay scale of the said post w.e.f 01.01.1989.

5. Ld. Counsel for the petitioner has relied upon a case of *Union of India v. K.L. Taneja* passed by the Division Bench of this Court in *W.P(C) 8102/2012* wherein it is held that the retrospective promotion cannot be reckoned and service jurisprudence does not recognise retrospective promotion. Thus, the order passed by the Id. Tribunal is contrary to the settled position of law.

6. Ld. Counsel further submits that the Tribunal further failed to appreciate that when respondent / workman qualified the trade test, he was promoted to the promotional post, i.e., Garden Choudhary w.e.f 21.04.2005. Therefore, Ld. Tribunal is not justified in holding that the respondent / workman is entitled to get the pay scale of Garden Choudhary w.e.f 01.01.1989 to 14.04.2005 in the pay scale of Rs.950 – Rs. 1,500/-, revised to Rs.3,050 – Rs.4,590/- w.e.f 01.01.1996, meant for Garden Choudhary.

7. As per the statement of claim filed on behalf of the respondent / workman, he was promoted as Garden Choudhary vide Office Order dated

15.04.2005 and placed in the panel from the year 1989. After the promotion, he was posted in Civil Line Zone vide Office Order dated 21.04.2005. In compliance of the said order, the respondent / workman joined on the said date itself. He was performing his duty as Garden Choudhary w.e.f 01.01.1989, i.e., from the year of panel but he has been denied the status and pay scale of Rs. 950 – Rs. 1,500/-, revised to Rs.3,050 to Rs.4,590/- w.e.f 01.01.1996 applicable to Garden Choudhary.

8. It is further stated that 50% posts of Garden Choudharys are promotional post from Mali / Chowkidar etc. and there is no fixed qualification for grant of promotion. Similarly situated workman were also promoted along with the respondent / workman as Garden Choudhary including Veer Mohd., Jitender Verma and Mukesh Kumar etc., by the said order as referred above. As per order dated 15.04.2005, Veer Mohd., Jitender Verma and Mukesh Kumar were allowed the wages of Garden Choudhary w.e.f 01.01.1982, 1.1.1997 and 01.01.1999 respectively according to their year of panel. However, respondent / workman, who is senior to all the above three workmen as his year of panel is 1989 has been denied his arrears of wages as per panel w.e.f 01.01.1989, discriminately, arbitrarily and against the principle of natural justice.

9. The petitioner / Management in their Para-wise reply to the Statement of Claim denied that Respondent / workman had been performing as Garden Choudhary w.e.f 01.01.1989 and stated that he never performed the duties of Garden Choudhary. Therefore, question does not arise for pay-scale of Garden Choudhary to be given to respondent / workman.

10. The petitioner / Management also denied the claim of the respondent / workman for the post of Choudhary from the date of panel. However, it is admitted that panel was prepared of the candidates who were eligible for the trade test but trade test was conducted only in the year 2004, according to which, promotions were made.

11. It is further stated that Sh. Jitender Verma and Sh. Mukesh Kumar were given the status of Garden Choudhary from the date of panel vide Office Order dated 04.05.2005 and they were looking the work of Garden Choudhary.

12. The petitioner / Management examined Sh. Devki Nandan, Assistant Director, Horticulture as MW1. In cross-examination, he admitted that for the departmental promotion from the post of Mali to Choudhary, educational qualification is not required and who are having 8 years regular service as Mali are eligible to be appointed as Choudhary. He admitted that Ex.MW1/1 is the panel prepared by the Department for conducting trade test. Out of panel list, 18 workers were given appointment as Garden Choudhary. He also admitted that document Ex.WW1/1 is correct and same was duly approved by the Commissioner vide order dated 15.04.2005. Further admitted that all the workers listed in the list Ex.WW1/1, were made Choudhary from 15.04.2005. Also admitted that Sh. Jitender Verma, Mr. Ram Naresh, Sh. Dariyab Singh (respondent / workman), Ravinder Singh were relieved from Civil Line Zone to Headquarter w.e.f 21.05.2005. He further admitted that Veer Mohd., Jitender Verma and Mukesh Kumar all were juniors to respondent / workman. He deposed voluntarily that all the aforesaid workmen were assigned the duty of Choudhary before the date of

preparation of panel. The respondent / workman was senior in the list and his name was at serial no. 1 as Ex.MW1/1. Further admitted that no document regarding the working as Choudhary as per Ex.MW1/W1 has not been brought before the Tribunal to prove the same.

13. On the issue raised by the petitioner / Management that Section 2 (K) of the Industrial Disputes Act is not applicable as far as the claim of the respondent / workman is concerned. However, WW2 Sh. B.K. Prasad, President of MCD General Mazdoor Union has proved the Registration Certificate of the Union as Ex.WW2/1 and copy of letter informing to Additional Deputy Commissioner (Labour) MCD. Accordingly, correspondence regarding promotion to the Union for negotiating and correspondence in respect of the workmen working under Horticulture Department is Ex.WW2/3. Sh. B.K. Prasad further deposed that Managing Committee of Union in its meeting held on 24.12.2006 sponsored the cost of workman to raise the present dispute and copy of the espousal / sponsorship by the Union has been proved as Ex.WW2/4. He also proved on record the list of Office Bearers of MCD General Mazdoor Union for the year 2007-2008 dated 27.09.2007, i.e., WW2/2 signed by Sh. Bhoop Singh, General Secretary of the Union sent to the Registrar of Trade Unions and Commissioner of MCD in which the name of Mr. B.K. Prasad, President of Union is existing at Serial No. 1 of the list.

14. Keeping in view the facts noted above, Ld. Tribunal opined that the workman has been espoused by Union. Since the espousal of the case of the Union has been proved, the claims fall under Section 2 (K) of the Industrial Disputes Act. Moreover, the respondent / workman has proved the record /

order of the Management dated 15.04.2005 as Ex.WW1/1 bearing the signatures of Additional Deputy Commissioner (Horticulture), wherein the names of 50 workmen are mentioned, stating therein that each worker has qualified for the Garden Choudhary. MW1 has admitted in cross-examination that document Ex.WW1 was duly approved by the Commissioner. MW1 has also admitted that no document regarding working as Choudhary as per MW1/W1 has been brought before this Tribunal. Also admitted that name of respondent / workman appears in the said order at serial no. 1 and his year of panel is shown as 1989.

15. Respondent / workman has claimed that he has been working in the post of Garden Choudhary from 01.01.1989, i.e, the date of his panel. It is recorded by the Ld. Tribunal in Para 24 that no suggestion has been put to the respondent / workman in his cross-examination that he had not worked as a Garden Choudhary w.e.f 01.01.1989, i.e, from the date of his panel. Moreover, relevant record has not been produced to prove that the respondent was not working as Choudhary from the date of panel.

16. Keeping in view the facts recorded above, I find no discrepancy in the order dated 03.10.2013 passed by the Tribunal.

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

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With the dismissal of the instant petition, instant application has become infructuous and dismissed as such.

SURESH KAIT, J

SEPTEMBER 01, 2014/jg