

\$~72 to 205 & 212

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

Date of Order: December 06, 2018

- 1) + W.P.(C) 5770/2013 & CM APPL. 12738/2013
- 2) + W.P.(C) 64/2015 & CM APPL. 98/2015
- 3) + W.P.(C) 5489/2016 & CM APPL. 22858/2016
- 4) + W.P.(C) 6675/2013 & CM APPL.14509/2013
- 5) + W.P.(C) 6678/2013 & CM APPL. 14512/2013
- 6) + W.P.(C) 6684/2013 & CM APPL. 14520/2013
- 7) + W.P.(C) 6689/2013 & CM APPL.14528/2013
- 8) + W.P.(C) 6692/2013 & CM APPL. 14542/2013
- 9) + W.P.(C) 7007/2013 & CM APPL. 15159/2013
- 10) + W.P.(C) 7679/2013 & CM APPL.16367/2013
- 11) + W.P.(C) 7689/2013 & CM APPL.16378/2013
- 12) + W.P.(C) 7694/2013 & CM APPL.16386/2013
- 13) + W.P.(C) 7696/2013 & CM APPL.16390/2013
- 14) + W.P.(C) 7796/2013 & CM APPL.16577/2013
- 15) + W.P.(C) 7797/2013 & CM APPL.16579/2013
- 16) + W.P.(C) 7803/2013 & CM APPL.16588/2013
- 17) + W.P.(C) 8108/2013 & CM APPL.17122/2013
- 18) + W.P.(C) 655/2014 & CM APPL.1318/2014
- 19) + W.P.(C) 697/2014 & CM APPL.1391/2014
- 20) + W.P.(C) 2677/2014 & CM APPL.5576/2014
- 21) + W.P.(C) 8614/2014 & CM APPL.19856/2014
- 22) + W.P.(C) 9273/2014 & CM APPL.21012/2014
- 23) + W.P.(C) 9295/2014 & CM APPL.21064/2014
- 24) + W.P.(C) 9331/2014 & CM APPL.21127/2014
- 25) + W.P.(C) 9355/2014 & CM APPL.21158/2014
- 26) + W.P.(C) 9391/2014 & CM APPL.21224/2014
- 27) + W.P.(C) 47/2015 & CM APPL.79/2015
- 28) + W.P.(C) 981/2015
- 29) + W.P.(C) 1020/2015 & CM APPL.1807/2015
- 30) + W.P.(C) 1838/2015 & CM APPL.3292/2015

- 31) + W.P.(C) 1839/2015 & CM APPL.3294/2015
- 32) + W.P.(C) 1840/2015 & CM APPL.3296/2015
- 33) + W.P.(C) 1841/2015 & CM APPL.3298/2015
- 34) + W.P.(C) 1843/2015 & CM APPL.3302/2015
- 35) + W.P.(C) 1844/2015 & CM APPL.3304/2015
- 36) + W.P.(C) 1846/2015 & CM APPL.3308/2015
- 37) + W.P.(C) 1847/2015 & CM APPL.3310/2015
- 38) + W.P.(C) 1848/2015 & CM APPL.3312/2015
- 39) + W.P.(C) 1849/2015 & CM APPL.3314/2015
- 40) + W.P.(C) 1850/2015
- 41) + W.P.(C) 1851/2015
- 42) + W.P.(C) 1852/2015 & CM APPL.3320/2015
- 43) + W.P.(C) 1857/2015 & CM APPL.3328/2015
- 44) + W.P.(C) 1858/2015 & CM APPL.3330/2015
- 45) + W.P.(C) 1859/2015 & CM APPL.3332/2015
- 46) + W.P.(C) 1864/2015 & CM APPL.3334/2015
- 47) + W.P.(C) 1865/2015 & CM APPL.3336/2015
- 48) + W.P.(C) 1866/2015 & CM APPL.3338/2015
- 49) + W.P.(C) 1867/2015 & CM APPL.3340/2015
- 50) + W.P.(C) 1869/2015 & CM APPL.3344/2015
- 51) + W.P.(C) 1870/2015 & CM APPL.3346/2015
- 52) + W.P.(C) 3946/2015 & CM APPL.7048/2015
- 53) + W.P.(C) 4483/2015 & CM APPL.8107/2015
- 54) + W.P.(C) 4488/2015 & CM APPL.8114/2015
- 55) + W.P.(C) 4501/2015 & CM APPL.8141/2015
- 56) + W.P.(C) 4502/2015 & CM APPL.8143/2015
- 57) + W.P.(C) 4503/2015 & CM APPL.8145/2015
- 58) + W.P.(C) 4823/2015 & CM APPL.8717-8718/2015
- 59) + W.P.(C) 4892/2015 & CM APPL.8856/2015
- 60) + W.P.(C) 4893/2015 & CM APPL.8858/2015
- 61) + W.P.(C) 4897/2015 & CM APPL.8864/2015
- 62) + W.P.(C) 5031/2015 & CM APPL.9082/2015
- 63) + W.P.(C) 5174/2015 & CM APPL.9383-9384/2015
- 64) + W.P.(C) 5176/2015 & CM APPL.9386-9387/2015
- 65) + W.P.(C) 5177/2015 & CM APPL. 9388-9389/2015
- 66) + W.P.(C) 5183/2015 & CM APPL. 9400-9401/2015
- 67) + W.P.(C) 5184/2015 & CM APPL. 9402-9403/2015

- 68) + W.P.(C) 5185/2015 & CM APPL. 9404-9405/2015
- 69) + W.P.(C) 5186/2015 & CM APPL. 9406-9407/2015
- 70) + W.P.(C) 5187/2015 & CM APPL. 9408-9409/2015
- 71) + W.P.(C) 5646/2015 & CM APPL. 10164/2015
- 72) + W.P.(C) 5871/2015 & CM APPL. 10572/2015
- 73) + W.P.(C) 5872/2015 & CM APPL. 10574/2015
- 74) + W.P.(C) 5873/2015 & CM APPL. 10576/2015
- 75) + W.P.(C) 5874/2015 & CM APPL. 10578/2015
- 76) + W.P.(C) 5875/2015 & CM APPL. 10580/2015
- 77) + W.P.(C) 5876/2015 & CM APPL. 10582/2015
- 78) + W.P.(C) 5877/2015 & CM APPL. 10584/2015
- 79) + W.P.(C) 5878/2015 & CM APPL. 10586/2015
- 80) + W.P.(C) 5879/2015 & CM APPL. 10588/2015
- 81) + W.P.(C) 5880/2015 & CM APPL. 10590/2015
- 82) + W.P.(C) 5881/2015 & CM APPL. 10592/2015
- 83) + W.P.(C) 6078/2015 & CM APPL. 11052/2015
- 84) + W.P.(C) 6086/2015 & CM APPL. 11066/2015
- 85) + W.P.(C) 6090/2015 & CM APPL. 11073/2015
- 86) + W.P.(C) 6097/2015 & CM APPL. 11084/2015
- 87) + W.P.(C) 6271/2015 & CM APPL. 11401/2015
- 88) + W.P.(C) 6901/2015 & CM APPL. 12645/2015
- 89) + W.P.(C) 6902/2015 & CM APPL. 12647/2015
- 90) + W.P.(C) 6904/2015 & CM APPL. 12651/2015
- 91) + W.P.(C) 6905/2015 & CM APPL. 12653/2015
- 92) + W.P.(C) 6908/2015 & CM APPL. 12658/2015
- 93) + W.P.(C) 6909/2015 & CM APPL. 12660/2015
- 94) + W.P.(C) 6993/2015 & CM APPL. 12819/2015
- 95) + W.P.(C) 6994/2015 & CM APPL. 12821/2015
- 96) + W.P.(C) 6996/2015 & CM APPL. 12824/2015
- 97) + W.P.(C) 7015/2015 & CM APPL. 12853/2015
- 98) + W.P.(C) 7041/2015
- 99) + W.P.(C) 7042/2015 & CM APPL. 12899/2015
- 100) + W.P.(C) 7045/2015 & CM APPL. 12903/2015
- 101) + W.P.(C) 7161/2015 & CM APPL. 13126/2015
- 102) + W.P.(C) 7264/2015 & CM APPL. 13327/2015
- 103) + W.P.(C) 7266/2015 & CM APPL. 13331/2015
- 104) + W.P.(C) 7267/2015 & CM APPL. 13333/2015

- 105) + W.P.(C) 7268/2015 & CM APPL. 13335/2015
- 106) + W.P.(C) 7270/2015 & CM APPL. 13339/2015
- 107) + W.P.(C) 7640/2015 & CM APPL. 14887/2015
- 108) + W.P.(C) 7642/2015 & CM APPL. 14891/2015
- 109) + W.P.(C) 7643/2015 & CM APPL. 14893/2015
- 110) + W.P.(C) 7646/2015 & CM APPL. 14898/2015
- 111) + W.P.(C) 7913/2015 & CM APPL. 15995-15996/2015
- 112) + W.P.(C) 8678/2015 & CM APPL. 19038/2015
- 113) + W.P.(C) 8683/2015 & CM APPL. 19044/2015
- 114) + W.P.(C) 10808/2015 & CM APPL. 27792/2015
- 115) + W.P.(C) 10812/2015 & CM APPL. 27798/2015
- 116) + W.P.(C) 11213/2015 & CM APPL. 29189/2015
- 117) + W.P.(C) 11635/2015 & CM APPL. 30889/2015
- 118) + W.P.(C) 96/2016 & CM APPL. 471/2016
- 119) + W.P.(C) 98/2016 & CM APPL. 473/2016
- 120) + W.P.(C) 470/2016 & CM APPL. 1915-1916/2016
- 121) + W.P.(C) 1552/2016 & CM APPL. 6692/2016
- 122) + W.P.(C) 1553/2016 & CM APPL. 6694/2016
- 123) + W.P.(C) 1555/2016 & CM APPL. 6698/2016
- 124) + W.P.(C) 1556/2016 & CM APPL. 6700/2016
- 125) + W.P.(C) 1557/2016 & CM APPL. 6703/2016
- 126) + W.P.(C) 1558/2016 & CM APPL. 6706/2016
- 127) + W.P.(C) 5530/2016 & CM APPL. 23099/2016
- 128) + W.P.(C) 5819/2016 & CM APPL. 23980/2016
- 129) + W.P.(C) 5821/2016 & CM APPL. 23984/2016
- 130) + W.P.(C) 5824/2016 & CM APPL. 23987/2016
- 131) + W.P.(C) 5826/2016 & CM APPL. 23991/2016
- 132) + W.P.(C) 6417/2016 & CM APPL. 26278/2016
- 133) + W.P.(C) 4478/2017 & CM APPL. 19555/2017
- 134) + W.P.(C) 4494/2017 & CM APPL. 19642/2017
- 135) + W.P.(C) 6100/2015 & CM APPL.11090/2015

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Gaurang Kanth, Advocate for
Petitioners in W.P.(C) 770/2013,
64/2015, 5489/2016, 6675/2013,
6678/2013, 6684/2013, 6689/2013,

6692/2013, 7007/2013, 7679/2013,
7689/2013, 7694/2013, 7679/2013,
7796/2013, 7797/2013, 7803/2013,
8108/2013, 655/2014, 697/2014,
2677/2014, 8614/2014, 9273/2014,
9295/2014, 9331/2014, 9355/2014,
9391/2014, 47/2015, 981/2015,
1020/2015, 3946/2015, 4823/2015,
5031/2015, 5646/2015, 6271/2015,
7264/2015, 7266/2015, 7267/2015,
7268/2015, 7270/2015, 7640/2015,
7642/2015, 7643/2015, 7646/2015,
7913/2015, 8678/2015, 8683/2015,
10808/2015, 10812/15, 11213/2015
11635/2015, 96/2016, 98/2016,
470/2016, 1552/2016, 1553/2016,
1555/2016, 1556/2016, 1557/2016,
1558/2016, 5530/2016, 5819/2016,
5821/2016, 5824/2016, 5826/2016,
6417/2016, 4478/17 & 4494/2017

Ms. Anju Gupta, Advocate with
Mr. Roshan Lal Goel, Advocate
for the petitioners in W.P.(C)
4483/2015, 4488/2015, 4501/2015,
4502/2015, 4503/2015, 4892/2015,
4893/2013, 4897/2015, 5871/2015,
5872/2015, 5873/2015, 5874/2015,
5875/2015, 5876/2015, 5877/2015,
5878/2015, 5879/2015, 5880/2015,
5881/2015, 6078/2015, 6086/2015,
6090/2015, 6097/2015, 6100/2015,
7913/2015, 8678/2015, 8683/2015,
10808/2015, 10812/2015, 96/2016,
98/2016, 470/2016, 1552/2016,
1553/2016, 1555/2016, 1556/2016
& 1557/2016, 1558/2016.

Mr. Digvijay Rai and Mr. Kustubh Singh, Advocates for the petitioners in W.P.(C) 1838/2015, 1839/2015, 1840/2015, 1841/2015, 1843/2015, 1844/2015, 1846/2015, 1847/2015, 1848/2015, 1849/2015, 1850/2015, 1851/2015, 1852/2015, 1857/2015, 1858/2015, 1859/2015, 1864/2015, 1865/2015, 1866/2015, 1867/2015, 1869/2015, 1870/2015, 5174/2015, 5176/2015, 5177/2015, 5183/2015, 5184/2015, 5185/2015, 5186/2015, 5187/2015, 7640/2015, 7642/2015, 7643/15 & 7646/2015

VS.

- 1) ROHTASH KUMAR & ORS.
- 2) HARI SHANKAR & ORS.
- 3) BRIJPAL SINGH & ANR.
- 4) TULIRAM & ANR.
- 5) RAM PRASAD & ORS.
- 6) FIRDAUS & ANR.
- 7) SHIVAJI & ORS.
- 8) HORAM & ANR.
- 9) SRI OM & ANR.
- 10) KRISHNA DEVI & ANR.
- 11) BRIJ KISHORE & ANR.
- 12) CHATTAR SAIN & ANR.
- 13) SOHAN LAL & ANR.
- 14) RAGHUNATH SINGH AND ORS.
- 15) SUHAGWATI & ANR.
- 16) DHARAMVIRI & ANR.
- 17) BIMLA AND ANR.
- 18) SUDARSHAN & ORS.
- 19) BHOLA & ANR.
- 20) CHHOTO & ANR.
- 21) UMED & ANR.

- 22) BISHAN SINGH & ANR.
- 23) PADAM & ANR.
- 24) KALYAN AND ORS.
- 25) DYANAND AND ORS.
- 26) SANTAR PAL & ANR.
- 27) BRIJ LAL & ORS.
- 28) RAM SAHAI & ANR.
- 29) CHIMMAN & ORS.
- 30) NAWAB SINGH & ORS.
- 31) RAM SWAROOP & ANR.
- 32) RAM LOT & ORS.
- 33) SHIV LAL & ANR.
- 34) RAM ROOP & ANR.
- 35) UMA SHANKAR & ANR.
- 36) SOHAN LAL & ANR.
- 37) MAHENDER SINGH & ANR.
- 38) DHORA RAM & ANR.
- 39) SRI CHAND & ANR.
- 40) SUNITA DEVI & ANR.
- 41) JEEVAN & ORS.
- 42) BRIJ LAL & ORS.
- 43) GIRDHARI LAL & ORS.
- 44) KAMAL PASWAN & ORS.
- 45) SANT BAHADUR & ANR.
- 46) VIJAY SINGH & ANR.
- 47) KHOB LAL & ANR.
- 48) JEET SINGH & ANR.
- 49) MADAN LAL & ORS.
- 50) RAM SARAN & ANR.
- 51) RAJAN & ORS.
- 52) VINOD KUMAR & ORS.
- 53) MS. VIDYA DEVI & ANR.
- 54) SHRI RAM PAL & ANR.
- 55) SHARWATI DEVI & ANR.
- 56) MS. MUKESH DEVI & ANR.
- 57) PRATAP SINGH & ANR.
- 58) DAYAWATI & ANR.

- 59) BAGMAL & ORS.
- 60) SHRI JAGDISH & ANR.
- 61) RAM SINGH & ORS.
- 62) BHULA RAM & ORS.
- 63) DAYA CHAND & ANR.
- 64) KAILASHO & ORS.
- 65) SAROJ AND ORS.
- 66) CHANDER PAL & ANR.
- 67) RATAN SINGH & ORS.
- 68) MADAN LAL & ORS.
- 69) RAMESH CHAND & ANR.
- 70) MAM CHAND & ORS.
- 71) BHAGWAT & ORS.
- 72) KAMTA & ORS.
- 73) SHYAM BABU & ORS.
- 74) PHOOL SINGH & ANR.
- 75) RAM RATI & ORS.
- 76) TRILOK CHAND & ORS.
- 77) HARI RAM & ORS.
- 78) ISHWAR SINGH AND ANR.
- 79) BRAHAM SINGH & ANR.
- 80) MAM CHAND & ANR.
- 81) DHARAM VIR & ANR.
- 82) JAIPAL SIGNH & ANR.
- 83) SHAM WATI & ANR.
- 84) NAND KISHORE & ANR.
- 85) MEERA DEVI & ANR.
- 86) RAM BAHADUR & ORS.
- 87) DAYA CHAND & ANR.
- 88) HIRA LAL AND ORS.
- 89) ABDUL JALIL
- 90) MEER SINGH
- 91) ROSHNI DEVI
- 92) MAYA DEVI
- 93) CHAND ROOP
- 94) BIJENDER AND ORS.
- 95) JEET KAUR

- 96) DIL BAGH AND ORS.
- 97) RAM AVTAR AND ORS.
- 98) BHULE RAM AND ORS.
- 99) SUHAGWATI
- 100) DHARAMVIRI
- 101) BHAGMAL
- 102) RAJVIR SINGH & ORS.
- 103) RAM PAL & ORS.
- 104) BHOPAL SINGH & ANR.
- 105) JAGDISH & ORS.
- 106) MAYA DEVI & ORS.
- 107) KALYAN AND ORS.
- 108) RAM LOTAN AND ANR.
- 109) VINOD KUMAR AND ORS.
- 110) KANHIYA LAL & ANR.
- 111) SRIM OM AND ANR.
- 112) RAJE RAM & ANR.
- 113) DEVAK RAM & ANR.
- 114) HARI CHAND & ORS.
- 115) SATPAL & ORS.
- 116) HARI LAL
- 117) MAHABIR SINGH & ORS.
- 118) LEKH RAJ AND ANR.
- 119) GANGA SARAN & ORS.
- 120) RAM CHANDER & ANR.
- 121) SHRI MOHAN LAL & ANR.
- 122) DULI CHAND & ANR.
- 123) YASIN & ANR.
- 124) PANNA LAL & ANR.
- 125) SHRI SATVIR SINGH & ANR.
- 126) BANI SINGH & ANR.
- 127) HET RAM & ANR.
- 128) MAHARAJ SINGH AND ORS.
- 129) VASH DEV AND ANR.
- 130) RATTAN LAL AND ANR.
- 131) RAM LAL AND ORS
- 132) APLATOON AND ORS.

- 133) GOPI AND ORS.
134) SARDAR SINGH AND ORS.
135) VIJAY SHAMSHER SINGH & ORS.

Through: Mr. Varun Prasad, Advocate for the Workman in all the petitions.

Mr. Satyakam, Addl. Standing Counsel with Mr. Mohit. Kumar, Advocate for respondent-GNCTD in W.P.(C) 64/2015, 5489/2016, 5156/2015, 5877/2015, 98/2016, 96/2016, 5824/2016. 4892/2015, 4493/2015, 4897/2015 & 5031/2015

Mr. Rizwan, Advocate for respondent-GNCTD in W.P.(C) 7643/2015, 470/2016, 5819/2016 & 5826/2016.

Mr. Sanjay Ghose, Advocate with Mr. Babu Ram Advocate for GNCTD in W.P.(C) 6678/2013, 4483/2015, 4488/2015, 4501/2015, 4502/2015, 4503/2015, 4823/2015, 4892/2015, 4893/2015, 4897/2015, 5031/2015, 5871/2015, 5873/2015, 5874/2015, 5875/2015, 5876/2015, 5878/2015, 7264/2015, 7266/2015, 7267/2015, 7268/2015, 7270/2015, 10808/2015 & 10812/2015.

Mr. Devesh Singh, Addl. Standing Counsel (Civil), GNCTD with Ms. Urvashi Tripathi & Ms Sukiriti Ghai, Advocates for GNCTD in W.P.(C) 7007/2013, 8683/2015 & 11635/2015.

Mr. Naushad Ahmad, Addl. Standing Counsel for GNCTD Advocate for GNCTD in W.P.(C) 1839/2015, 1840/2015, 1846/2015, 1852/2015 & 1866/2015

Mr. Warisha Farasat, Advocate for GNCTD in W.P.(C) 6684/2013, 8108/2013 & 5187/2015.

Mr. Abhinav Singh, Advocate with Mr. Mohd. Kaisair Ansari, Advocate in W.P.(C) 1867/2015, 1552/2016, 1557/2016, 1558//2016.

Mr. Mayank Bamniyal, Advocate for respondent No.2 in W.P.(C) 5186/2015.

Mr. Prateek Chadha, Adv. for respondent No.8 in W.P.(C) 5177/2015, for respondent No.2 in W.P.(C) 5183/2015 & WPC 6692/2013.

Mr. Shadan Farasat, Addl. Standing Counsel with Mr. Hafsa Khan, Advocate in W.P.(C) 7694/2013, 7796/2013, 7797/2013, 7803/2013, 697/2014, 47/2015, 1865/2015, 6078/2015, 6086/2015, 1552/2016 & 1558/2016.

Mr. Ankur Chhibber, Advocate with Mr. Bhanu Gupta, Advocate for respondent No.2 in W.P.(C) 7696/2013.

Mr. R.K. Agnihotri, Advocate for Respondent No. 16 in W.P. (C) 1867/2015

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. The above captioned petitions arise out of common Award of 1st April, 2006, (*Annexure P-2*) vide which petitioner-South Delhi Municipal Corporation (*hereinafter referred to as 'SDMC'*) was directed to grant pay scale of ₹3050-4590 to the Gardeners (*henceforth referred to as the 'Malis'*), who have been found fit for grant of benefit under the Assured Career Progression Scheme (*for short 'ACP'*) as first upgradation. To seek execution of the Award, respondents had filed an application under Section 33(C) (1) of the *Industrial Disputes Act, 1947* and a reply thereto was filed by petitioner. Impugned 'Recovery Certificate' of 29th August, 2013 (*Annexure P-1*) is assailed in the lead case i.e. W.P.(C) 5770/2013. Similar 'Recovery Certificates' are also assailed in connected cases. The stand taken by petitioner in the reply so filed, is that for promotion of *Malis* to the post of Chaudhary, Trade Test was conducted in the year 2005 and the process of conducting the test for promotion of *Mali* to the post of *Chaudhary* and grant of ACP benefits, is at the final stage.

2. With the consent of counsel representing both the sides, the above captioned petitions have been heard together, while treating *W.P.(C) 5770/2013* as the lead case, and are being decided by this common order.

3. Learned counsel for petitioner informs that out of respondents, 125 *Malis*/Gardeners have cleared the Trade Test and as per the Recruitment Regulation for the post of Chaudhary (*Annexure P-4*), promotion to this

post is made on the basis of Trade Test .

4. Attention of this Court is drawn to the common Award of 2006 to point out that the pay scale of Chaudhary is to be given to the Malis/Gardeners, who have been found fit for grant of the benefit under the ACP scheme. It is also pointed out by learned counsel for petitioner that as per order of 1st October, 2012 (*Annexure P-3*) passed by a Co-ordinate Bench of this Court, the grant of benefit under the ACP scheme is subject to the Malis/ Gardeners being found fit as per the ACP scheme. Attention of this Court is drawn to Office Memorandum of 9th August, 1999 to point out that the condition for grant of benefit under the ACP scheme is the fulfillment of the benchmark i.e. of passing the Trade Test. It is also pointed out that as per the Office Memorandum of 10th February, 2000, promotion norms have to be fulfilled for upgradation under the ACP Scheme and no upgradation shall be allowed if an employee fails to qualify the skill test.

5. The challenge to impugned 'Recovery Certificate' of 29th August, 2013 (*Annexure P-1*) by petitioner-SDMC is on the ground that the impugned order does not take note of the fact that respondents/workmen have not cleared the Trade Test and the concerned Deputy Commissioner has erred in issuing Recovery Certificate for differential amounts i.e. the pay scale of respondents/workmen under the pay scale of Chaudhary. It is also submitted that the impugned order cannot be sustained because neither the Award nor order of 1st October, 2012 (*Annexure P-3*) quantifies the money due to respondents/workmen and since the pay scale

of Chaudhary is to be granted to respondents/workmen, only if they qualify Trade Test, therefore, the impugned order deserves to be set aside on this ground also.

6. On the contrary, learned counsel for respondents/workmen supports the impugned order and submits that many of the respondents/workmen are from DDA and as per decision of 1st March, 2012 of Division Bench of this Court in W.P.(C) 2621/2010 *Municipal Corporation of Delhi Vs. Ram Avtar & Ors.* (Annexure R-5 to the counter affidavit), respondents/ workmen, who are from DDA, cannot be subjected to the Trade Test. It is pointed out that Division Bench in the aforesaid order has categorically declared that Mali/Gardener from DDA are to be treated as if they had continued service with the DDA and their Recruitment Rules do not prescribe passing of any Trade Test for being entitled for promotion to the post of *Chaudhary*. Attention of this Court has been drawn to the ACP Scheme, as contained in Office Memorandum of 9th August, 1999, to point out that in case of isolated post, in the absence of defined hierarchical grade, financial upgradation has to be given on the next higher pay scale, as indicated in the ACP Scheme. So, it is submitted that the next higher pay grade under the ACP Scheme automatically flows to the workmen if there is no inquiry against them. Respondents' counsel has referred to the Award of 1st April, 2006 (Annexure P-2) and order of 1st October, 2012 (Annexure P-3) to submit that there is no requirement of passing Trade Test. It is pointed out that petitioner had not contested before the Tribunal or before the Division Bench of this Court that there is no requirement of passing the Trade Test

and so, this condition cannot be now put upon respondents.

7. It is next submitted that the Malis/Gardeners from DDA and MCD cannot be treated differently by prescribing Trade Test for the Malis/Gardeners of MCD. It is asserted by respondent's counsel that no Trade Test was conducted for the Malis/ Gardeners from DDA who have been absorbed with the MCD. Lastly, it is submitted that prescribing of Trade Test for the Malis/Gardeners is discriminatory and is violative of Article 14 of the *Constitution of India*. Nothing else is urged by either side.

8. Upon hearing and on perusal of impugned 'Recovery Certificate' 29th August, 2013 (*Annexure P-1*), Award of 1st April, 2006 (*Annexure P-2*) and order of 1st October, 2012 (*Annexure P-3*), material on record and the decision cited, I find that impugned 'Recovery Certificate' of 29th August, 2013 (*Annexure P-1*), directing petitioner to pay differential of the pay scales of Mali/ Gardener and Chaudhary does not take note of the fact that the Award of 1st April, 2006 (*Annexure P-2*) grants Chaudhary's pay scale of ₹3050-4590/- to the respondents/ workmen subject to their being found fit. Even this Court's Order of 1st October, 2012 (*Annexure P-3*) affirms the Award of 1st April, 2006 (*Annexure P-2*) with the rider that those Malis/Gardeners, who have been found fit for grant of benefit under ACP scheme, have to be granted the pay scale of Chaudhary. Oblivious of this rider, impugned order directs petitioner to pay the differential of the afore-referred two pay scales.

9. During pendency of this petition, operation of the impugned order

was stayed. Against the interim order of stay, respondents/workmen had filed LPA before the Division Bench and as per the order of 20th September, 2013 (*Annexure R-1*), the interim order was not disturbed and the parties were given liberty to raise the plea of Trade Test, etc., before this Bench.

10. Parity is sought by respondents/workmen with Malis/ Gardeners from DDA who, upon their absorption, have been granted the pay scale of Chaudhary without the Trade Test. A Division Bench of this Court vide order of 1st March, 2012 in W.P. (C) 2621/2010 titled *Municipal Corporation of Delhi Vs. Ram Avtar & Ors.* (*Annexure R-5 to the counter affidavit*) has placed the Malis, who have been absorbed from DDA, on a different footing by treating them to be the Gardener /Malis as if they are in continuous service with the DDA. It is matter of record that the Recruitment Rules of DDA did not prescribe passing of a Trade Test for being promoted as Chaudhary, whereas the Office Memorandum of 9th August, 1999 (*Annexure P-1 to petitioner's additional affidavit of 3rd October, 2014*) requires fulfillment of promotion norms for grant of ACP. It is categorically provided in the aforesaid ACP scheme that the Recruitment Rules for promotion/upgradation require an employee to qualify the skill test/Trade Test. It is true that Essential Screening Committee has recommended first financial upgradation to respondents/workmen, which upgrades respondents/workmen from the pay scale of ₹2610-₹4000/- to ₹2750/-₹4400/-, but the pay scale of Gardener/ Chaudhary is ₹3050-₹4590/-. By no stretch of imagination post of Chaudhary or case of respondent-workmen can be said to be

isolated cases.

11. As per the Recruitment Regulations for the Chaudhary (*Annexure P-4*), passing of Trade Test is essential and in the considered opinion of this Court, it cannot be diluted while relying upon decision of this Court in W.P. (C) 170/2011 titled *Municipal Corporation of Delhi Vs. Rajpal and 232 Ors.* rendered on 9th October, 2018 as a Single Bench of this Court has clarified that Gardeners from DDA, who have been absorbed in MCD, are governed by the Recruitment Rules of DDA and not by the Recruitment Regulations of petitioner-SDMC. It is clear from the Recruitment Regulations that for the post of Chaudhary (*Annexure P-4*), the prescribed qualification for direct recruitment will apply in case of promotion also. Since selection /promotion has to be made on the basis of Trade Test, therefore, the fitness aspect, as highlighted in the Award of 1st April, 2006 (*Annexure P-2*) and this Court's Order of 1st October, 2012 (*Annexure P-3*), essentially pertains to the passing of Trade Test.

12. Evidently, Malis from DDA absorbed in MCD and Malis from MCD are governed by different set of Recruitment Regulations and thus, they cannot be put at par. Thus, plea of discrimination is without any substance and is repelled.

13. During the course of hearing, it is brought to the notice of this Court that some respondents/workmen have passed the Trade Test. Needless to say that petitioner shall grant the pay scale of Chaudhary to such respondents/workmen, who have passed the Trade Test from the date when they have cleared the Trade Test and the differential of the pay

scale shall be paid to such respondents/workmen forthwith. So far as remaining respondents/workmen are concerned, petitioner shall ensure that a Trade Test for them is held within a period of four months from today, so that they can be granted the pay scale of Chaudhary upon their clearing the Trade Test. Such a course is adopted as merit cannot be sacrificed at any cost. Pertinently, meritorious amongst respondents have already cleared the Trade Test.

14. In light of the aforesaid, impugned order/ Recovery Certificates being oblivious of the fitness angle, i.e. of passing the Trade Test, are held to be unsustainable and are accordingly set aside, with direction to petitioner to hold the Trade Test for respondents/workmen at the earliest, but not later than 6th May, 2019, to ensure compliance of Award of 1st April, 2006 (*Annexure P-2*) and this Court's Order of 1st October, 2012 (*Annexure P-3*).

15. With the above-said directions, these petitions and the pending applications are accordingly disposed of. A copy of this order be given *dasti* to learned counsel for petitioner to ensure its compliance.

(SUNIL GAUR)
JUDGE

DECEMBER 06, 2018
p'ma