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

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Reserved on: 13.09.2022

Pronounced on: 27.09.2022

+ W.P.(C) 1918/2004

MUNICIPAL CORPORATION OF DELHI Petitioner

Through: Ms. Monika Arora,
Mr. Shivam Raghuwanshi and
Mr. Yash Tyagi, Advocates.

versus

ITS WORKMEN AS LADY HEALTH
VISITORS

..... Respondent

Through: Mr. Sanjoy Ghose,
Sr. Advocate with
Ms. Meghna De and Mr.
Rishabh Jaitley, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Writ Petition emanates from the award dated 05.10.2002 (hereinafter referred to as the '**Impugned Award**'), passed by the Presiding Officer, Industrial Tribunal No. III, Delhi in I.D. No. 22/87 titled as *Management of Municipal Corporation of Delhi versus Its workmen employed as Lady Health Visitors represented by Hospital Employees Union*. Vide the Impugned Award, the learned Tribunal held that since Lady Health Visitors (hereinafter referred to as '**LHVs**') employed by

the petitioner are dispensing similar duties as that of 'A' grade Staff Nurses and have historical pay parity, are entitled to have parity in pay scale and allowances as that provided to 'A' Grade Staff Nurses.

FACTS AS STATED IN THE PETITION

2. The main bone of contention in the present matter is the report of the 3rd Central Pay Commission (hereinafter referred to as 'CPC') on the basis of which pay scales of employees working in various posts/cadres were revised and amended. After adoption of 3rd CPC's recommendations by the Petitioner/Management, the pay scale of LHV's were revised from pay bracket of Rs.150-290/- to Rs.330-560/-.
3. The revised pay scale brought disappointment to the LHV's who expressed their discontentment on the basis that their pre-revised pay scale was at par with pay scale of 'A' Grade Staff Nurses. However, after adoption of the 3rd CPC's recommendations, the pay scale of the LHV's varied drastically from that of Grade 'A' Staff Nurses without any justified reason even when the work load, responsibilities and technical skills of the LHV's were more than that of the 'A' Grade Staff Nurse. An industrial dispute has been raised by LHV's through Hospital Employees Union against the Petitioner/Management on the ground that LHV's working with the petitioner have been discriminated by revising their pay scale to a lower grade than the 'A' Grade Staff Nurse without considering the nature and intensity of their work.

4. Further, another dispute was raised by the respondent pertaining to reduction in washing allowances paid to LHVs which was earlier paid at the rate of Rs. 15/- per month which was at par with the nursing staff employed in medical institutions of the Petitioner till 1976. However, the washing allowance of LHVs was reduced to Rs. 4.50/- per month while nursing staff still continues to receive the washing allowance at the earlier rate.
5. Aggrieved by management's administrative actions, LHVs through Hospital Employees Union raised an industrial dispute:
(a) demanding parity in pay scales with Grade 'A' Staff Nurses;
(b) uniform washing allowance @ Rs.15/- per month w.e.f. 01.01.1977; and (c) automatic promotion to selection grade to those LHVs, who have rendered 14 years of service as LHVs.
6. The appropriate Government on 29.05.1979 forwarded the industrial dispute between the Petitioner/Management and its workmen/LHVs for adjudication to Industrial Tribunal, on the following terms of reference:

"1.. Whether the Lady Health visitors who were in the pay scale of Rs.150-290/- prior to Third Pay commission report are also entitled for the pay scale of Rs. 425-560 which is given to Staff Nurses who were prior to Third Pay Commission Report in the scale of Rs.150-300, if so, what directions are necessary?"

2. Whether the Lady Health Visitors are entitled to Rs.15/- pm washing allowances w.e.f. 01.01.1977 which they were getting upto 31.12.1976 and is also given to Nursing staff, if so, what directions are necessary in this respect?"

3. *Whether all Lady Health visitors who have put in 14 years of service are entitled to selection grade, if so what directions are necessary?"*

7. The Petitioner produced Mr. Narendra Pal (MW1), Dr. Y.C. Verma (MW2), Dr. A.K. Hazara (MW3) and Dr. Uma Chopra (MW4); while the Respondent examined Mr. C.P. Aggrawal (WW1/WW5), Smt. Surinder Kohli (WW2), Smt. Kunti Girdhar (WW3) and Smt. Sukhwant Minhas (WW4). The Petitioner filed its written statement denying the claim of the Respondent.
8. The Industrial Tribunal vide its Award dated 05.10.2002 decided the terms of references in following manner:

*"20. In view of my above findings to the foregoing issues. The claim of the workmen succeeds partly. In order to answer the query in the terms of reference, **it is held that the lady health visitors are entitled to the pay scale of Rs. 425-560/- as per third pay commission w.e.f. 1.1.73** **They are also entitled to the washing allowance @ Rs. 15/- p.m. w.e.f. 1.1.77 till the same was raised to Rs. 75/- p.m. The lady health visitors are not entitled to be put in selection grade after having competed 14 years of their service automatically** the management is accordingly directed to pay the arrears of difference of pay and washing allowance to the workmen- Lady Health Visitors, This award is accordingly passed. Appropriate government be informed."*

(emphasis supplied)

9. Aggrieved by the above Impugned Award, the petitioner has approached this Court under Article 226 of the Constitution of India and is seeking issuance of appropriate writ and direction to quash the Impugned Award.

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SUBMISSIONS MADE ON BEHALF OF PETITIONER

10.Ms. Monika Arora, learned counsel appearing for the petitioner has challenged the Impugned Award on the grounds that the learned Tribunal has committed gross error while adjudicating the dispute by wrongly placing both LHVs and Grade 'A' Staff Nurses in same category and by accepting the fact that both the services had same pay scale prior to 3rd CPC. However, LHVs and Grade 'A' Staff Nurses were drawing salaries in different pay scales since the very inception and there existed no parity whatsoever in their pay scales, which are as follows:

<u>Category</u>	<u>Pre-revised pay scale (prior to 3rd CPC)</u>	<u>Revised pay scale (after 3rd CPC)</u>
Lady Health Visitors (LHVs)	Rs.150-290/-	Rs.330 -560/-
Grade A staff nurse	Rs 210-320/-	Rs. 425-640/-

11.Further, it has been contended that the learned Tribunal passed the Impugned Award under the misconception that the post of Staff Nurse and Auxiliary Nurse and Midwife (hereinafter referred to as 'ANMs') are same. Instead of scrutinizing the role of Staff Nurse, the learned Tribunal went on to examine the duties of ANMs which was placed on record as Ex. WW-2/5. Learned counsel further contended that the posts of ANM and Staff Nurses cannot be compared for any reason since both are completely distinct posts. Learned counsel for the petitioner

further contends that there exists differences in (a) cadre of ANMs, LHVs and Staff Nurse; (b) Educational qualifications; (c) Recruitment rules for promotion; (d) Training period; (e) Nature of work; and (f) Pay level, which is as under:-

	<u>ANMs and LHVs</u>	<u>Staff Nurses</u>
A. <u>Recruitment</u>	ANM is filled through direct recruitment from Delhi Subordinate Services Selection Board (DSSSB). Feeder post for promotion to post of LHVs is ANM.	Direct Recruitment through DSSSB.
B. <u>Pay Scale</u>	ANM- Level 4 as per 7 th CPC, LHV- Level 5 as per 7 th CPC. This is category D post.	Level-7 as per 7 th CPC This is category B post.
C. <u>Recruitment Rules for promotion</u>	ANMs- Direct Recruitment LHV- 8 year experience as ANMs and 6 months professional training. No further promotion provided under the	a. Direct Recruitment. b. Promotion as Assistant Nursing Sister (ANS) c. Deputy Nursing Sister (DNS) d. Nursing Sister (NS) e. Later on, promoted

	Rules.	as Nursing Superintendent.
<u>D. Nature of duty/ responsibility</u>	ANMs and LHVs works in colonies of economically poorer sections of society. Their work revolves around creating awareness about family planning, educating people about usage of contraceptives, general awareness campaign about anaemia, high blood pressure, pregnancy diet etc. ANMs are under supervision of LHVs.	Staff Nurses are employed in hospitals and their duties includes taking care of patients in OPD, IPD, wards, maternity homes, ICU etc. They attend patients and give them medication as prescribed by doctors. They perform duties round the clock in shifts in hospital.
<u>E. Educational qualification</u>	12 th class pass along with ANM diploma	BSc. (Nursing) from a recognised University of 4 years duration.

12. Learned counsel further contended that the learned Tribunal vide the Impugned Award has exceeded its jurisdiction and encroached upon domain of the Executive. Revision of the pay scales is an exclusive function of the Executive and the Tribunals/Courts should not enter the domain of Executive. Therefore, the Impugned Award is *prima facie* illegal and liable to be set aside.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

13. *Per Contra*, Mr. Sanjoy Ghose, learned senior counsel for the Respondent/Workman argued in support of the Impugned Award. Learned senior counsel contended that both LHV's and 'A' Grade Staff Nurses were drawing salary in similar pay scale of Rs.150-280/290 before adoption of 3rd CPC recommendations. However, after adoption of 3rd CPC recommendation, pay scales were amended by which the Staff Nurses were placed in the pay scale of **Rs. 425-640/-** while LHV's were placed in much lower pay scale of **Rs. 330-560/-**. Such actions of the petitioner are clearly against the established principle of '*Equal pay for Equal work*', as LHV's were performing similar jobs, in fact more strenuous tasks than Staff Nurses and have wider field/domain of work. In order to substantiate his arguments, learned senior counsel placed reliance on the testimony of MW-1 Sh. Narender Pal. It is further contended that while Staff Nurses are employed in regular hospitals only, LHV's work both in hospitals/wards, perform outreach activities in community and are 'polyvalent' workers who assist all branches of local public health. Therefore, revision of pay scales, accepting the recommendations of 3rd CPC was unfair and the learned Tribunal has correctly granted the pay scales to LHV's in parity with Staff Nurses taking into consideration the nature of work, working hours and technical knowledge of the LHV's.

LEGAL ANALYSIS

14. This Court has heard learned counsel for the parties and perused the documents available on record.

15. The issue before this Court is that whether the LHV's are entitled for pay parity with Grade 'A' Staff Nurses, on grounds that both were drawing the same pay scale before the adoption of recommendations of 3rd CPC and both were performing similar duties. For adjudication of the same, this court have examined duties, pre-revised pay scale, educational qualifications, promotion hierarchy of ANMs, LHV's and Grade 'A' Staff Nurses to ascertain if both are similarly situated. Duties of ANMs, LHV's and Staff Nurses have been reproduced herein below:

"DUTIES OF ANMs.

1 She will establish with antenatal mothers, Infants, & toddlers & F.F. Cases she will advice them to attend the centre on clinic days.

2. She will attend delivery cases promptly at home whenever require

3. She will pay follow up visits for 10 days after delivery twice a day for 2days & then once a day for next eight days.

4. She will provide all the possible facilities to the patient whenever she attends a delivery case. She will contact LHV/ Doctor in case the delivery is found abnormal. She will accompany the patient on the advice of doctor/LHV.

CLINICAL

(a) In clinics and on domiciliary visits, she will provide maternity and child health services, prenatal, postnatal, infant and pre-school care.

(b) She will assist the physician in IUCD clinics particularly in group education of patient and give follow up services as required.

SUPERVISORY

(a) She will maintain close working relationship with indigenous midwives and counsel them in techniques of delivery.

(b) She will secure from indigenous midwives information on births and deaths and supply this to the computer for vital statistic and F.P. records.

(c) She will keep in touch with village registers of vital statistics to ensure that the record of all births and death as know to her are entered in the registered.

EXTENSION WORK

(a) She will give advice and guidance especially to antenatal mothers on nutrition hygiene and house hold sanitation.

(b) The A.N.M. will refer persons needing medical care to available services and help make such arrangements, as are necessary and possible. She will refer the mothers to the sub-centres for antenatal clinical examination.

(c) She will distribute educational materials.

(d) The A.N.M. should work for the child care and is responsible for immunization for children.

FAMILY PLANNING.

A. ON ROUTING DOMICILIARY VISITS.

- i. She will inform women about Family planning particularly its value in family welfare and about contraceptives and sterilization methods.*
- ii. She will supply contraceptives to the needy couples and will instruct women in the use of contraceptives.*
- iii. She will refer women to the lady medical officer for IUGD insertion,*
- iv. The A.N.M. will identify women who are acceptable to others as educational leaders and depot holders for contraceptives prepare them for this work and supply their names and other data required to the Health Assistant Family planning.*
- V. She will hold group discussions on subjects of planning with women.*
- vi. The ANMs should also maintain close contact with the activities among males which are being developed by other family planning staff, and health workers in the area.*

B. SPECIAL SERVICES

- 1. She will make visit once a month to women who have accepted responsibilities as educational leaders to help them with their work.*
- 2. She will visit women depot holders once a month to deliver supplies and help them their work.*
- 3. She will participate in training camps for leaders and for depot holders.*
- 4. She will visit women whose husband or they themselves indicated interest in sterilizations to give them information about the operations.*

5. She will participate in special events such as film shows, mass meetings and exhibitions etc.

6. She will attend meetings of villages welfare committee when possible.

REPORTS

1. She will prepare and submit the reports on extension work as and when required.

Duties of Lady Health Visitor

“I. MCH& FP, INFANT &TODLLER CARE SERVICES.

1. The Lady health Visitor will assist medical officer in charge of MCH &FP centre in organizing MCH &FP service for the area.

2. She will be responsible for setting up clinics for the doctor e.g. antenatal, well Baby, post Natal & F.P. clinics.

3. She will be responsible for immunization of mothers &children.

4. She will visit all registered mothers and children in the houses for follow up and advice.

5. She will survey the families to know the area & made contacts for target couple registers.

6. The lady health visitor will run A.N. clinic, well Baby clinic, and postnatal clinic and FP clinic. She will also carry out home visiting in her respective in area covered by the centre.

7. She will attend all emergencies whenever called by the dais ANMs. While attending domiciliary midwifery cases. She will make satisfactory arrangement for referring cases to hospital when needed.

II HEALTH EDUCATION

- 1. She will undertake training of Indigenous dais through ANMs.*
- 2. The lady health visitor is responsible for health Extension Education In the community. She will work in the field as community educator. She will educate the mothers in clinics and distribute educational material. She will provide family planning information and services to the women folk both in the centre or in the area.*
- 3. She will contact & try to involve in the health programmers, lady social Education organizers, Wives of leaders, school Teachers Secretary of Mahila Mandals and other woman leaders of various activities interested in madico-social work.*

III SUPERVISORY

- 1. She will supervise, supplement and guide the work of the ANMs and trained dais in giving MCH & FP Services to the public. She will educate ANMs & dais about MCH & FP, Nutrition and communicable diseases.*
- 2. She will guide the ANMs & Dais to establish women depot holders for contraceptives in rural & urban areas.*
- 3. She will visit every sub-centre at least once a week. If there are two or more lady health visitors attached to one centre, they will visit each centre twice a week.*

IV MISCELLANEOUS

She will responsible for maintaining medicine & their stock register like linen and movable property of the centres.

2. *She will be responsible for preparation and submission of reports for MCH &FP work done in the area by the centre.*

3. *She will maintain all the prescribed records that is cards & registers.*

V. SPECIAL PROGRAMMES

1. *She will actively participate in any special program e.g. W.H.O. day, children Day, Cleanliness week, Family planning fortnight sterilizations Comp.*

2. *She will work in close cooperation with Extension Educators. Health Inspectors for mutual help on technical matters to Co-ordinate working of the staff of lower levels and thus making an integrated effort to cover the whole area.*

3. *She will notify cases of over or suspected cases of small pox, cholera, malaria, diphtheria, whooping cough and other communicable diseases to zonal Health officer whenever such cases come to her notices.*

4. *She will assist Medical officer in charge in school health work as and when required.*

iii. *Hygiene and sanitation, she will be responsible for general hygiene & sanitation of the premises of the centre.”*

Duties of 'A' Grade Staff Nurse

“Duties for the post of Nursing Officer (Then the 'A' Grade Staff Nurse)

The staff nurse is responsible for the complete nursing care of the patients assigned to her. The following duties would be shared with nursing students, if any, and auxiliary staff such as nursing orderlies, ward boys, ayas, sweepers as the situation warrants.

(1) General care of the patients

- 1. Admission and discharge of patients.*
- 2. Assistance and instructions to patients and their relations.*
- 3. Bathing patients including dally care of mouth, nails and pressure points.*
- 4. Four hourly, or more frequent, attention to pressure points.*
- 5. Giving and removing of bed pans and urine pots.*
- 6. Giving and removing of hot water bottles.*
- 7. Bed making.*
- 8. Feeding of patients.*
- 9. Distention of diets, milk, etc.*
- 10. Preparation of special foods, eggs, milk, etc.*
- 11. Technical nursing care of patients: -*
 - (i) Administration of medicine, Assistance in administration of intravenous injections, Administration of injections, Preparing for injections and clearing up, Recording of medicines and injections given, Taking and charting T.P.R, Rounds with doctor, Technical procedures e.g., enema, catheterization, dressings, irrigations oxygen therapy, preparing for and clearing up after procedures, Preparation for and assistance in clinical tests and medical procedures, Pre- and post-operative care, Urine Testing, Collecting labelling and dispatching of specimens, Escorting patients and from departments, Giving and receiving reports.*
 - (ii) Ward management:- Handing over and taking charge of shift, Keeping the ward clean and tidy, of surgical supplies, bandages, splints, Routine care*

and cleaning of dressing trolleys, cupboards apparatus, main tosh, etc., Care of clean and soiled plane, Disinfection of linen, beds, floor and bed pans.

(ii) General

- 1. Demonstration and guidance to student nurses and domestic staff*
- 2. Supervision of domestic staff.*
- 3. Assistance in orientation of new Staff Nurses.*
- 4. Participation in staff education and staff meeting.*
- 5. Participation in professional activities.*
- 6. Any other duty that may be specified from time to time.”*

16. After perusing the respective duties of the ANMs, LHVs and Staff Nurses, this Court observed that the duties performed by LHVs are more of preventive nature such as imparting education about reproduction health, pre-natal and post-natal care, immunization and other tasks necessary to ensure family welfare by way of community-based intervention. On the other hand, duties of a staff nurse are of curative nature i.e., taking care of patients in wards, ICU, operation theatre and providing medical attention in emergency cases. Staff Nurses handle critical medical cases like that of casualty, emergency surgeries, cesarean delivery (C-section) and works alongside medical professionals, hence requires specialized skills which are not required in case of LHVs. Moreover, the post of LHV is a Category 'III' Non-ministerial post, while Grade 'A' Staff Nurses fall under

Category 'B'. This Court has perused the Circular dated 31.01.1975 (**Ex. MW1/1**) published by the Petitioner wherein a schedule of present and revised pay scales of certain categories have been mentioned. **Ex. MW1/1** clearly stipulates that the pre-revised pay scale (before 3rd CPC) of public health nurse/nursing sister (Grade 'A' Staff Nurses) was Rs.210-320 while the pre-revised pay scale (before 3rd CPC) of LHVs was Rs.150-290/-. Such contrast in employment regulations and nature of work leaves no room for ambiguity that both the posts are not similarly situated and cannot be equated or one be termed as 'more strenuous' than the other.

17. Recruitment Rules are also taken into consideration that shows that category, educational qualification, entry level pay scale, promotion hierarchy of LHVs and Grade 'A' Staff Nurses are different. This Court is of the view that since LHVs and Grade 'A' Staff Nurses dispense different services in distinct domains, there cannot be any comparison between the two and pay parity cannot be claimed on this basis. It is an established principle that 'equal pay for equal work' is applicable among equals and cannot be applied to unequal.

18. The Department of Expenditure, Ministry of Finance in a letter dated 12.03.1975 had clarified that the 3rd CPC has not recommended any parity between the LHVs and Grade 'A' Staff Nurses and separate scales have been proposed by the Commission for the two categories having regard to their qualifications, period of training, nature of duties and

responsibilities etc. Since the recommendations of the CPC have been accepted, it is not possible to prescribe the same pay scale for LHVs under the Central Government as recommended by the CPC for Grade 'A' Staff Nurse.

19. This Court has found that the learned Tribunal has passed the Impugned Award under a wrong impression that ANMs and Grade 'A' Staff Nurses are same posts, and erroneously awarded pay scale of Grade 'A' Staff Nurses to LHVs by equating duties of ANMs with duties of a Grade 'A' Staff Nurses. The learned Tribunal has committed a gross error in this respect as all the three categories i.e., ANMs, LHVs and Grade 'A' Staff Nurses falls under distinct cadres and perform different duties. Therefore, this Court is of the view that distinct categories of workers performing distinct jobs are not similarly situated, and principle of '*Equal pay for Equal work*' cannot be claimed under these circumstances.

20. The Hon'ble Supreme Court in the case of ***State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121*** held that Courts shall not interfere with the executive functions of CPC, unless there exist some serious grounds for such interference:

"18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the

performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

21. Co-ordinate Bench of this Court in a recently adjudicated dispute titled as ***Sujit Gangopadhyay v. TDSAT (2022 SCC OnLine Del 2014)*** has discussed about principles of ‘Equal Pay for Equal Work’:

“28. In Federation of All India Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91, the Hon'ble Supreme Court observed as under on the question of Equal Pay for Equal Work’:—

“7. Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus

with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

22. In light of the observations made in **J.P. Chaurasia (supra)** and **Sujit Gangopadhyay (supra)**, the Impugned Award is *ultra vires* since fixing of pay scale is purely an Executive function, and the learned Tribunal should not have transgressed its chartered territory if pay scale was determined by considering all factors such as work load, nature of duties, qualifications etc.
23. Since there exists apparent disparity between posts of LHVs and Grade 'A' Staff Nurses, this Court is of the considered view that Respondent's claim for pay parity and uniform washing allowance cannot be accepted. Term of Reference No.2 decided by the learned Tribunal is erroneous, as similarity in both the posts has not been proved, and is therefore, set aside.
24. In view of the detailed discussion herein above, this Court is of the considered view that the Impugned Award passed by the learned Tribunal is contrary to the evidence on record and hence the same is perverse and illegal. The present Writ Petition is hereby allowed and the Impugned Award is set aside.
25. Learned senior counsel for the Respondent pointed out that the Respondent has already recovered the difference of pay from the Petitioner. Hence any order as to recovery of the said amount will cause irreparable loss and damage to the Respondents who are

surviving on their meagre amount of salary. As discussed herein above, there is no similarity between LHVs and Grade 'A' Staff Nurses and hence LHVs cannot be allowed to draw pay as that of Grade 'A' Staff Nurses. This Court is conscious of the fact that permitting the Respondent to retain the recovered amount in the present matter will create a disparity in the cadre of LHVs and hence the same cannot be allowed. Further, the Petitioner is a public authority and hence the misplaced sympathy towards the Respondent will cause huge loss to the public exchequer. Therefore, this Court does not deem it appropriate to extend the said relief to the Respondent. Liberty is granted to the Petitioner to recover the said excess amount paid to the Respondents in accordance with law. No order as to cost.

SEPTEMBER 27, 2022

GAURANG KANTH, J.