

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

% *Judgment Reserved on: November 30, 2015*
Judgment Delivered on: December 11, 2015

+ **LPA 882/2011**

MANAGEMENT MUNICIPAL CORP OF DELHI Appellant
Represented by: Mr.Sachin Saini, Advocate for
Ms.Madhu Tewatia, Advocate.

versus

WORKMEN THR GENERAL MAZDOOR UNION Respondent
Represented by: Mr.Varun Prasad, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated July 21, 2011 in W.P.(C) No.5102/2011 passed by the learned Single Judge upholding the award dated February 10, 2010 of the Industrial Tribunal noting that the respondent/workmen were entitled to pay scale of semi-skilled workmen, the appellant Municipal Corporation of Delhi (in short 'the MCD') prefers the present appeal.
2. The workmen of the respondent union raised an industrial dispute on which, a reference on the following terms was made to the Industrial Tribunal:

“Whether demand of Malaria Beldars for pay scale of Rs.3050-4590 and change of designation to Malaria Field Worker is justified and if yes, to what directions are necessary in this respect?”

3. In the claim petition the respondent stated that the work which they were performing was of a special nature involving health hazards as they were using chemicals which were highly poisonous to eradicate Malaria and since they were performing skilled nature of job they were entitled to pay scale of ₹3050-4590/- and also sought change of designation from Malaria Beldars to Malaria Field Workers in the skilled category.

4. In reply, the appellant stated that the nomenclature of the posts of Malaria Beldars and Permanent Malaria Jamadars had been changed to Field Workers and Superior Field Workers vide order dated July 26, 2008 however, the same did not affect their existing recruitment rules, nature of duties, pay scales and perks. It was stated that the duties performed by the workmen of the respondent were purely manual and since no technical qualification was prescribed for appointment to the post they could not be treated as skilled workmen and hence were not entitled to pay scale of ₹3050-4590/-,

5. On the basis of evidence led by the management witness, the learned Tribunal noted that part of the claim of workmen with regard to change of nomenclature stood satisfied. As regards the nature of duties being performed by the workmen being un-skilled, semi-skilled or skilled, the learned Tribunal noted the cross-examination of the management witness who admitted that the function of Malaria Beldars/Field Workers was of spraying larvacides in accumulated water and doing fogging operation to kill adult mosquitoes. The workmen sprayed IRS for residual purpose and their job also involved handling of primphos, Btex and various medicines which were mixed with water. The learned Tribunal noted that even if no technical

qualification was prescribed for the post of Malaria Beldar/Field Worker it required some skill in handling of spray and fogging machines and mixing of medicines with water which were toxic in nature. Though the work may not involve high skills but definitely involved some skills and thus the work performed by Malaria Beldars/Field Workers fell in the category of semi-skilled. It was thus held that the Malaria Beldars/Field Workers were entitled to pay scale as were admissible to semi-skilled workmen.

6. The main thrust of the appellant's response is that no technical qualification has been prescribed for the post of Malaria Beldar and that similarly placed seasonal workers in the National Institute of Communicable Disease (NICD), Government of India who were designated as DDT Beldar (Field Worker) and DDT Jamadar (Superior Field Worker) were in the pay scale of ₹2550-3200/- (pre-revised ₹196-232/-). Hence the MCD also changed the designation however, there pay scales were not required to be changed. It is further stated that the workmen of the respondent were given additional special allowance of ₹690/- per month as patient care allowance for the nature of duties performed by them. Thus by no means they were entitled to pay scale of ₹3050-4590/- as claimed. It is stated that recruitment rules were the sole guiding factors for the post in question to determine the pay scale as admissible which fact has neither been considered by the Tribunal nor the learned Single Judge. Reliance is placed on the decisions reported as (1995) 5 SCC 628 M.R.Gupta vs.Union of India & Ors., (1997) 3 SCC 545 Shiba Kumar Dutta & Ors. vs.Union of India & Ors., (2002) 6 SCC 72 State of Haryana & Anr. vs.Haryana Civil Secretariat Personal Staff Association, (2007) 8 SCC 279 S.C.Chandra & Anr.vs.State of Jharkhand & Ors., (2007) 7 SCC 472 Union of India vs.Arun Jyoti Kundu &

Ors. and (2008) 1 SCC 630 Union of India & Ors. vs. Hiranmoy Sen & Ors.

It is also urged that the claim is barred by delay and laches and that though there is no period of limitation prescribed to claim pay fixation but there is limitation in seeking arrears for the past period.

7. The premise of appellant's contention is that the Courts should not interfere with the pay scales fixed by the government unless a case of hostile discrimination is made out and that even the Pay Commission's recommendations are not binding on the Government. There is no dispute to these propositions however, in the present case the Tribunal has not fixed the pay scales but determined whether the duties performed by the workmen of the respondent were un-skilled or semi-skilled or skilled in nature. Both the parties led their evidence and on the findings of facts as arrived, by the learned Tribunal it committed no error in coming to the conclusion that the duties performed by the workmen of the respondent were semi-skilled in nature as they were handling spray and fogging machines and mixing toxic and hazardous chemicals with water.

8. In the decision reported as AIR 1990 SC 298 Paras Nath & Ors. vs. Union of India & Ors., the Supreme Court while considering the various categories of employees working with Delhi Milk Scheme on the facts noting that the nature of functions performed by Dairy Mates and Junior Plant Operators were the works of semi-skilled workers held them to be entitled to the said pay scales. The Court noted that Dairy Mates had to be versatile with the work in all the units, i.e. both un-skilled or semi-skilled, hence they could not be equated with the Sweepers, Chowkidars and Malis who were categorized as un-skilled workers.

9. In the decision reported as 1978 MP LJ 664 V.K.Jain & Anr.

vs. Kamal Singh Thausingh & Anr. the Division Bench upheld the order of the Labour Court in a case where the employee was performing the duties of Supervisor but treated as Jobber classifying him as Supervisor. On an objection as to the jurisdiction of the Labour Court, the High Court noted that the Labour Court in fact did not grant promotion to the employee but properly classified him in the category he was entitled to and directed the employer to make the payment accordingly.

10. In the present case also the finding of fact of the Labour Court is that the duties performed by the Malaria Beldars/Field Workers were that of semi-skilled workers and thus they were entitled to the pay scale of semi-skilled workers. The present is not a case where pay scale revision has been directed by the Labour Court, it only decided that the Malaria Beldars/Field Workers would fall in the category of semi-skilled workers.

11. Though one of the grounds urged is that for a semi-skilled workman, technical education is required, however no recruitment rules have been placed on record to show that unless possessed of a technical education, the workman cannot be performing semi-skilled works.

12. Thus we find no infirmity in the order of the Industrial Tribunal and that of the learned Single Judge holding that the workmen of the respondent performed duties which fell in the semi-skilled category however, we agree with the appellant that the finding of the Industrial Tribunal is vague to the extent it does not provide since when the workmen would be entitled to pay scale in the semi-skilled category as revised from time to time. The workmen can be granted the pay scales of semi-skilled workers only for the period after the claim was made and hence we hold that the decision of the Industrial Tribunal that Malaria Beldar/Field Workers were entitled to pay

scale of semi-skilled category would be effective from March 18, 2008 i.e. the date of institution of the claim before the Industrial Tribunal.

13. The appeal is accordingly disposed of.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 11, 2015
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