

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

+ Judgment delivered on: February 29, 2016

% W.P.(C) No.4690/2004

WORKMEN OF DDA

.....Petitioner

**Through: Mr. Varun Prasad and Mr. G. S. Charya,
Advocates.**

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

**Through: Mr. Arun Birbal and Mr. Sanjay Singh,
Advocates.**

**CORAM:
HON'BLE MR. JUSTICE I.S. MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The present petitioners, i.e., Workmen, DDA (*hereinafter referred to as the 'petitioner-workmen'*) have preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India for issuance of appropriate Writ, order or direction to set aside the impugned Award dated 01.05.2003 passed by the Presiding Officer, Industrial Tribunal No. III, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 20/1997.
2. The brief facts stated are that the petitioner-workmen, i.e., Shri Ramgopal Singh, Shri Adil Singh, Shri Rajinder Prasad, Shri Kartar

Singh, Shri Kamal Kishore, Shri Hoshiar Singh, Shri Nepal Singh, Shri Virender Singh, Shri Anil Kumar, Shri Prem Chand, Shri Amrinder Kumar Singh, Shri Bhim Singh, Shri Yogender Kumar, Shri Ashok Kumar, Shri Rakesh Kushwaha, Shri Babu Ram, Mohd. Sarfarajuddin and Shri Ashok Kumar, whose cause of action has been exposed through the D.D.A Mazdoor Union wherein the petitioner-workmen were claiming the wages at par with the regular employees in the category of pump operator for the duration of their muster roll employment, i.e., pay scale of Rs. 260-350 revised to Rs. 950-1400 w.e.f. 01.01.1986.

3. Thereafter, the Government vide order No. F.24(4577)/96-Lab./53334-38 dated 23.12.1996 sent the dispute of the petitioner-management to the learned Industrial Adjudicator for adjudication, i.e.,

“Whether S/Shri Ram Gopal Singh, Adil Singh, Bhim Singh, Yogender Kumar, Ashok Kumar, Rajender Prasad, Kartar Singh, Kamal Kishore, Hoshiar Singh, Nepal Singh, Virender Singh, Anil Kumar, Prem Chand, Amrinder Kumar Singh, Rakesh Kushwaha, Babu Ram, Mohd. Sarfarajuddin and Ashok Kumar are entitled to wages at par with the regular employees for the duration of their muster-roll employment on daily wages, and if so, to what relief are they entitled and what directions are necessary in this respect?”

4. The petitioner-workmen were performing their duties as muster roll employees and were paid minimum wages from time to time. However, the petitioner-workmen also took the duty of pump operator, which was permanent in nature.

5. The petitioner-workmen are/were skilled workmen and remained in the continuous employment of the respondent-management. Consequently, following petitioner-workmen were regularised and seven petitioner-workmen were transferred from the respondent-management to MCD, i.e.,

S. No.	Name	Period of Muster Roll	Date of Regularisation	Date of Transfer to MCD
1.	Shri Ramgopal Singh	01.03.1983 to 18.09.1989	19.09.1989	
2.	Shri Adil Singh	12.01.1983 to 18.09.1989	19.09.1989	
3.	Shri Rajinder Prasad	01.01.1982 to 18.09.1989	19.09.1989	
4.	Shri Kartar Singh	17.01.1986 to 31.12.1993	01.01.1994	
5.	Shri Kamal Kishore	06.09.1982 to 31.12.1984	01.01.1985	
6.	Shri Hoshiar Singh	13.04.1983 to 18.09.1989	19.09.1989	
7.	Shri Nepal Singh	02.11.1981 to 05.03.1984	06.03.1984	
8.	Shri Virender Singh	01.12.1983 to 18.09.1989	19.09.1989	
9.	Shri Anil Kumar	10.08.1983 to 18.09.1989	19.09.1989	
10.	Shri Prem Chand	29.07.1983 to 18.09.1989	19.09.1989	
11.	Shri Amrinder Kumar Singh	01.01.1983 to 18.09.1989	19.09.1989	
12.	Shri Bhim Singh	19.05.1986 to 18.09.1989		-
13.	Shri Yogender Kumar	20.02.1986 to 25.04.1993		26.04.1993
14.	Shri Ashok Kumar	20.02.1986 to 25.04.1993		26.04.1993
15.	Shri Rakesh Kushwaha	09.07.1986 to 25.04.1993		26.04.1993
16.	Shri Babu Ram	09.07.1986 to 25.04.1993		26.04.1993
17.	Mohd. Sarfarajuddin	01.07.1986 to 25.04.1993		26.04.1993
18.	Shri Ashok Kumar	16.07.1986 to 25.04.1993		26.04.1993

6. The respondent-management during the relevant period were taking the work of pump operator from the regular employees in the pay scale of Rs.260-350, which was enhanced to Rs.950-1400 along with all allowances w.e.f. 01.01.1986.

7. The respondent-management during the period of muster roll employees till its regularisation and transfer to MCD took the duty of pump operator from the petitioner-workmen and they were not given salary of pump operator rather were given only the minimum wages. Consequently, after completing 90 days of continuous work, the petitioner-workmen were entitled to a difference of pay, i.e., minimum wages minus pump operators pay scale of Rs.260-350 which was enhanced to Rs.950-1400 along with all allowances.
8. The petitioner-workmen who have been regularised by the respondent-management arbitrarily not on its due date of regularisation are entitled to equal pay for equal work as shown below:

S. No.	Name	Period of Muster Roll	Date of Regularisation
1.	Shri Ramgopal Singh	01.03.1983 to 18.09.1989	19.09.1989
2.	Shri Adil Singh	12.01.1983 to 18.09.1989	19.09.1989
3.	Shri Rajinder Prasad	01.01.1982 to 18.09.1989	19.09.1989
4.	Shri Kartar Singh	17.01.1986 to 31.12.1993	01.01.1994
5.	Shri Kamal Kishore	06.09.1982 to 31.12.1984	01.01.1985
6.	Shri Hoshiar Singh	13.04.1983 to 18.09.1989	19.09.1989
7.	Shri Nepal Singh	02.11.1981 to 05.03.1984	06.03.1984
8.	Shri Virender Singh	01.12.1983 to 18.09.1989	19.09.1989
9.	Shri Anil Kumar	10.08.1983 to 18.09.1989	19.09.1989
10.	Shri Prem Chand	29.07.1983 to 18.09.1989	19.09.1989
11.	Shri Amrinder Kumar Singh	01.01.1883 to 18.09.1989	19.09.1989
12.	Shri Bhim Singh	19.05.1986 to 18.09.1989	
13.	Shri Yogender Kumar	20.02.1986 to 25.04.1993	
14.	Shri Ashok Kumar	20.02.1986 to 25.04.1993	
15.	Shri Rakesh Kushwaha	09.07.1986 to 25.04.1993	
16.	Shri Babu Ram	09.07.1986 to 25.04.1993	
17.	Mohd. Sarfarajuddin	01.07.1986 to 25.04.1993	
18.	Shri Ashok Kumar	16.07.1986 to 25.04.1993	

9. The claim of the petitioner-workmen is contested by the respondent-management and denied the allegations of petitioner-workmen on the ground that the petitioner-workmen were kept as muster roll employees for relevant period and they were not the permanent employees of the respondent-management. The payment for muster roll period has been paid to the petitioner-workmen. The petitioner-workmen were never appointed by the competent authority as regular pump operators. There is difference between work charge employees and permanent employees. There are three types of workmen which is clearly mentioned in the C.P.W.D. manual, i.e., casual labour (daily wagers), work charge employees and regular employees. The petitioner-workmen were kept on daily wage basis on muster roll. Therefore, they did not come in the category of regular pump operators and hence, are not entitled to any relief under the Equal Remuneration Act, 1976.
10. The petitioner-workmen reaffirm the averments made in the statement of claim and denied the allegations made in the written statement filed on behalf of the respondent-management.
11. Both the parties led their evidences on the respective issues and the learned Industrial Adjudicator after hearing both the parties passed the impugned Award. Consequently, the present Writ Petition is filed on behalf of the petitioner-workmen.

12. The learned counsel for the petitioner-workmen has submitted that the learned Industrial Adjudicator went wrong in deciding the issue whether the respondent-management has adopted the pay scale of CPWD employees requiring them to pay the minimum time scale with all allowances except increment. It is further submitted that this aspect of the matter had not been gone into by the learned Industrial Adjudicator. Therefore, the matter needs to be remanded back to the learned Industrial Adjudicator to give an exact finding on this issue. The learned counsel for the petitioner-workmen in support of his arguments has relied upon the judgment of the Apex Court in the case of *Surinder Singh and Another vs. Engineer-in-Chief, C.P.W.D. and Other, (1986) 1 SCC 639*, order of the Division Bench of Delhi High Court in the case of *North Delhi Municipal Corporation & Ors. vs. Harpal Singh & 460 & Ors, LPA 573/2013* and the policy of Municipal Corporation of Delhi No. F.4(2)/88-SCY/ON/672 dated 16.06.1988.

13. On the other hand, the learned counsel for the respondent-management vehemently opposes the contentions raised by the learned counsel for the petitioner-workmen and submits that the petitioner-workmen were working as daily wagers and since their position in law is that of a daily wager, they cannot adopt the same procedure which has been adopted for the purpose of regular employees. He further submits that whenever their services will be regularized, they will get benefits at

par with the regular employees and in support of his arguments has relied upon the judgments of the Apex Court in the case of *State of Haryana and Others vs. Jasmer Singh and Others*, (1996) 11 SCC 77, *State of Haryana and Others vs. Charanjit Singh and Others*, (2006) 9 SCC 321 and *State of Punjab and Another vs. Surjit Singh and Others*, (2009) 9 SCC 514 and also relied on the judgment of this Court in the case of *Rajbir Singh vs. D.D.A.*, 2007 (95) DRJ 300.

14. Instant is a case where the petitioner-workmen are raising a dispute pertaining to the pay scale for the duration of the muster roll employment when they were employed with the respondent-management. The petitioner-workmen are claiming their pay scale of pump operator on the basis of the parity as that of the regular employee.
15. The respondent-management in the written statement has not denied that the petitioner-workmen were employed with them. However on relying on the CPWD manual, the respondent-management came up with a plea that there are three types of workers with the management, i.e., (a) casual labour (daily wager), (b) work charge employee and (c) regular employees, and submitted that the petitioner-workmen were kept on muster roll as daily wagers and were not the permanent employees of the management.
16. The claim of the petitioner-workmen is that the respondent-management were taking the work of pump operator from the regular

appointed workmen in the pay scale of Rs.260-350 and revised pay scale to Rs.950-1400 w.e.f. 01.01.1996 onwards and the respondent-management discriminated the petitioner-workmen by not regularizing even after their completion of 90 days of continuous service with the respondent-management. The respondent-management further discriminated by not giving due leave to the petitioner-workmen and other pensionary benefits, whereas the petitioner-workmen were also entitled to equal pay for equal work with those employees who have been regularised and performed the work of pump operator in the pay scale of Rs.260-350 revised to Rs.950-1400 w.e.f. 01.01.1996.

17. There is a policy of the CPWD which has been adopted by the MCD, i.e., No. F.4(2)/88-SCY/ON/672 dated 16.06.1988, requiring daily rated workmen to be paid wages at par with regular counter parts which is reproduced as under:

“The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 1.4.88 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs.6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the date earlier than 1.4.1988. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be LPA 573/2013, 516/2013 & 514/2013 6 of 6 worked out on the basis on Rs.875/- per month. A preamble for approval of

increased rates of wages be taken to standing committee positively within two weeks."

The aforementioned policy requires differential in wages to be made to the daily rated workmen after 01.04.1988.

18. Admittedly, the petitioner-workmen were employed with the respondent-management during the relevant period. The respondent-management, i.e., DDA, also follows the CPWD manual.
19. The policy, circular dated 16.06.1988 was not placed before the learned Industrial Adjudicator by the parties in dispute at the time of passing the impugned Award for giving its effect to determine the issue in controversy. Therefore, the adjudication of the matter in controversy in presence of the aforesaid policy is required.
20. As such, the impugned Award dated 01.05.2003 is set aside and the file is sent back to the learned Industrial Adjudicator to adjudicate and pass a fresh Award after giving fair opportunities to both the parties. The present Writ Petition is disposed off accordingly.
21. Parties are directed to appear before the learned Industrial Adjudicator on 22.03.2016 and the learned Industrial Adjudicator is directed to dispose off the matter within a period of six months from the date of receipt of this judgment.

22. The Lower Court record be sent back with a copy of this Judgment.

No order as to costs.

I.S. MEHTA, J

FEBURARY 29, 2016

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