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

Reserved on: March 31, 2016
Date of decision: April 07, 2016

+ W.P.(C) 9324/2009

MUNICIPAL CORPORATION OF DELHIPetitioner
Through: Ms. Amita Gupta, Advocate.
versus

SHRI RAJVIR SINGHRespondent
Through: Mr. Varun Prasad, Advocate.

+ W.P.(C) 9391/2009

MUNICIPAL CORPORATION OF DELHIPetitioner
Through: Ms. Amita Gupta, Advocate.
versus

SHRI NARESH KUMARRespondent
Through: Mr. Varun Prasad, Advocate.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

VED PRAKASH VAISH, J.:

1. The petitioner, Municipal Corporation of Delhi has assailed award dated 25.08.2008 passed by learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi in I.D. No.107/2008 whereby the petitioner Management was directed to pay the difference of wages of Mali and that of Chaudhary i.e. the wages of Chaudhary to the respondents.

2. Since both the petitions involve similar question of law and arise out of similar order, both the petitions are being disposed of by this common judgment. For the sake of brevity the facts are being taken from W.P.(C) No.9324/2009.

3. The brief facts as culled out from the petition are that the respondent filed statement of claim alleging that he was initially employed as Mali w.e.f. 01st April, 1989. However, he was allotted the work of Chaudhary w.e.f. 01.01.2000 by competent officers of Horticulture Department and was posted at WP-Block, Pitampura, Rohini Zone, Delhi to work under the Section Officer, Assistant Director (Horticulture) and Deputy Director of Horticulture Wing, Rohini Zone. But the respondent was denied the pay scale of Chaudhary. The services of the respondent was regularized as Mali w.e.f. 01.04.1989, but he continued to perform his duty on the higher post. The non-payment of pay scale and status of Chaudhary w.e.f. 01.01.2000 is unjustified and against the principles of equal pay for equal work.

4. The petitioner herein contested the claim by filing written statement on the grounds, *inter alia*, that the dispute has not been espoused by the Union and no demand notice was served before raising the industrial dispute. The petitioner had stated that the respondent was engaged as Mali and regularized as Mali and cannot be promoted to the post of Garden Chaudhary. No office order was issued by any competent authority promoting or asking the respondents to perform the functions of a Garden Chaudhary. The Garden Chaudhary is a promotional post and the claimant should qualify 'trade test'.

5. Vide impugned award dated 25th August, 2008, it was held that the respondent was given additional work of Chaudhary and the respondent is entitled to the wages of Chaudhary w.e.f. 01st January, 2002 and 07th January, 2004.

6. Learned counsel for the petitioner contended that the respondent was appointed as Mali and was regularized on the same post. The respondent was neither allotted the said post nor did he perform the duties of Garden Chaudhary. Garden Chaudhary is a promotional post and a chaudhary has to be a qualified person.

7. Learned counsel for the petitioner further submits that there has been delay in raising the industrial dispute. The respondent alleged that he is working as Garden Chaudhary since 2000 but the dispute was raised in the year 2008.

8. *Per contra*, learned counsel for the respondent submitted that the respondent has joined as Mali and was regularized on the same post w.e.f. 01.04.1999. The respondent was allotted the work of Chaudhary by the Competent Officer of Horticulture Department w.e.f. 01st January, 2000 and he was posted at WP-Block, Pitampura, Rohini Zone, Delhi. Further, learned counsel for the respondent has drawn attention of this Court to the list of working Chaudhary's in Rohini Zone issued by Additional Director (Horticulture) which shows the name of the respondent (Ex. WW-1/1).

9. Learned counsel for the respondent has relied upon an award given by the Industrial Tribunal in I.D. No.122/1995. In the said case, the petitioner was directed to pay the difference of emoluments to said Mr. Jai Chand, Mali from the date he had been performing the duties of

Garden Chaudhary. The Municipal Corporation of Delhi challenged the said award by filing writ petition bearing W.P.(C) No.4799/2000 titled as '**MCD vs. Jai Chand & Anr**' which was dismissed on 24th September, 2004.

10. Relying upon judgment dated 20th April, 2011 of Division Bench of this Court in W.P.(C) No.7947/2010 titled as '**Municipal Corporation of Dehli vs. Shri Sultan Singh and Ors.**', learned counsel for the respondent submitted that the respondent is entitled to the difference of wages and the present petition is not maintainable.

11. I have carefully considered the submissions made by learned counsel for both the parties and have also perused the material on record.

12. In '**Selvaraj vs. Lt. Governor of Island, Port Blair and Ors.**', (1998) 4 SCC 291, the employee was not regularly promoted to the post of Secretary (Scouts) but he was regularly asked to lookafter the duties of Secretary (Scouts). The Hon'ble Supreme Court applying the principle of *quantum meruit* observed that the authorities should have paid to the employee the emoluments available in the higher pay scale during the time, he actually worked on the post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee.

13. In another case, titled '**Secy.-cum-Chief Engineer vs. Hari Om Sharma**', (1998) 5 SCC 87, the employee was promoted as Junior Engineer-I on a stop gap arrangement. The employee gave an undertaking that as the promotion is on the basis of stop gap arrangement, he would not claim any benefit pertaining to that post. It was held as under: -

“8.that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

14. A similar question was considered by Division Bench of this Court in W.P.(C) No.7947/2010 titled ‘**Municipal Corporation of Delhi vs. Sh. Sultan Singh & Ors.**’, decided on 20th April, 2011. The Division Bench after considering the relevant case law observed as under: -

“28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/ Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to

rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or unsustainability or perversity in the orders of the Tribunal has been made out.”

15. In the instant case, it is not disputed that the respondent was working as Chaudhary which fact is also evident from the list of working Chaudharys in Rohini Zone (Ex. WW-1/1). The directions for payment of difference of wages have been given by the Industrial Tribunal relying upon an earlier judgment of this Hon’ble Court in W.P.(C) No.11678/2006 titled as ‘**Satbir Singh vs. MCD**’.

16. In view of the facts and circumstances of the case and the law laid down in **Sultan Singh’s** case (supra), I do not find any illegality or perversity in the impugned award.

17. For the aforesaid reasons, both the writ petitions are bereft of any merit. The same deserve to be dismissed and the same are hereby dismissed with no order as to costs.

18. The trial Court record(s) be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

APRIL 07, 2016
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