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

+ W.P.(C) 3013/2015, CM APPLs. 5395-96/2015

SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Digvijay Rai, Adv.

versus

CHANDER BHAN AND ANR. Respondents
Through: Mr. Kush Sharma, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **18.10.2016**

1. The order of the Registrar dated 15.01.2016 recorded inter alia that there had been no appearance on behalf of respondent No. 1 despite being served, since 21.07.2015. The respondent – workman did not file a counter-affidavit despite the opportunities given to him on 21.07.2015, 01.10.2015 and 07.12.2015. Accordingly, his right to file the counter-affidavit was closed on 15.01.2016.
2. On 15.01.2016, none appeared for the said respondent No. 1 – workman nor was there anyone representing him on the subsequent date, i.e., 15.02.2016. Even today, there is no representation on behalf of the workman.
3. This writ petition challenges Recovery Notice dated 03.06.2013 which seeks to recover an amount of Rs.49,964/-(Rupees Forty Nine thousand Nine Hundred Sixty Four only) in favour of the workman pursuant to the Award of the Central Government Industrial Tribunal dated 13.11.2013 in I.D. No. 102/2000. The Award had directed extension of the

benefits of the ACP Scheme to the persons who were still in service and were eligible within one month from the date of publication of the Award failing which the management was to pay interest @ 9% per annum.

4. It is the petitioner's case that despite the benefits of the ACP Scheme already been given to the respondents – workmen and intimation of calculations in this regard to the Labour Commissioner as well as the Management – Respondent No. 1, the Deputy Labour Commissioner issued the impugned recovery notice. Said documents have been annexed with the petition as Annexure P-4.

5. The aforesaid Award was impugned in the writ petition and subsequently in a LPA which was disposed off by this Court vide judgment dated 31.05.2011 which held inter alia as under:

“12. Annexure R-7 pertains to Item No.2450 at pages 284-285 and is significant for two reasons - firstly because it takes cognizance of revision of scale of pay of skilled workers in the CPWD on the basis of an Award given by the Board of Arbitration by which scale of pay of Rs. 260-400/- was granted in lieu of Rs. 260-350/- and secondly for the reason that there is no mention of the alleged 'senior category/cadre' which was entitled to pay scale of Rs. 260-400/- as against Rs. 210-270/-. Annexure R-7 reads thus:-

Item No. 2450 : Revision of pay scales of skilled workers from 260-350 to 260-400

Letter No. F.33/5888/C&C dated 19.5.1982

Whereas the skilled workers like mason, painter,

carpenter etc. still getting the pay scale of 260-350 in the Municipal Corporation of Delhi.

Whereas the scale of pay of 26 categories of the skilled workers has been revised to 260-400 in lieu of Rs. 260-350 on the basis of Award given by the Board of Arbitration (JCM) w.e.f. 1.3.1973 by the Ministry of Works and Housing.

Whereas the Ministry of Works & Housing vide its letter No. 20/4/71-WCSII dated 5.3.1977 (copy enclosed) has decided as special case to agree to the revised scale of pay Rs.260-400 has been implemented w.e.f. 1.3.1973 and

Whereas the scale of pay revised by the Central Government from time to time are followed by the Corporation. This meeting of the Standing Committee, therefore resolves that the scale of pay of 26 categories of skilled workers in the Municipal Corporation of Delhi be revised from 260-350 to 260-400 w.e.f. 1.3.1973.

This is a case for revision of pay scales of skilled workers from 260-350 to 260-400. The Central PWD vide their orders No.20/4/71-WCSII dated 2nd Feb. 1977 decided to increase the scales in view of the Award given by the Board of Arbitration (JCM).

The Engineering Department is following the norms of CPWD/Delhi Admn./PWD and all the scales applicable to the workers in CPWD/Delhi Admn./PWD are being implemented in the department. There is also an understanding with the

labour unions that whenever there is change in the scales in CPWD/Delhi Administration/PWD they will automatically become applicable to the workers of the Engineering Department. This has been done from time to time whenever such orders have taken place.

The categories involved in the Engineering Department are:

1. MASON
2. CARPENTER
3. PAINTER
4. FITTER
5. BLACK SMITH
6. OPERATOR
7. MOULDER
8. TURNER
9. WELDER
10. WIREMAN GRADE-I
11. MECHANIC SETTER
12. ELECTRIC MISTRY
13. ELECTRIC MOTOR MECHANIC

It is, therefore, recommended that the pay scales of the skilled workers of the Engineering Department be revised from 260-350 to 260-400 w.e.f. 1.1.73 notionally to the said categories of skilled workers in position on or before 1.3.73 and the actual benefit in terms of arrears of pay etc. would accrue to them only with effect from 1.3.1973.

C.A. has concurred in the proposal.

The case is put up to the Commissioner exercising the powers under Section 490(2) (b) of the DMC Act, 1957 to approve the above recommendations,

(ii) Decision No.2050/Stg. Dated 22.5.1982

The proposal contained in Commissioner's letter NO.F33/5888/C&C dated 19.5.1982 is recommended to the Commissioner exercising powers of the Corporation for approval.

Item No.2450

As recommended by the Commissioner exercising the powers of the Standing Committee vide decision No.2059/Stg. Dated 22.5.82 the proposal contained in Commissioner's letter No. F.33/5888/C&C dated 19.5.1982 is approved.”

6. It is contended that accordingly, the respondent having been regularized in the pay scale of Rs.260-400/- w.e.f. 01.04.1980, would be entitled to arrears of pay and other benefits of pay for the period 01.04.1980 to 01.01.1996 since the respondents – workmen were identically placed along with other workmen who have already been regularized in the said pay scale as per order of the Division Bench. The benefit of the Award was computed on 19.05.2010 and was communicated to the respondent No.1. The computation is in the pay scale of Rs.260-400/- as per the order of the Division Bench. Further details have been supplied by the petitioner to the Deputy Labour Commissioner, South District, Govt. of NCT of Delhi vide letter dated 12.08.2014. It says that the requisite amount shall be paid to the

respondent No. 1 – workman. It is the petitioner’s case that having made the requisite payment, nothing further remains to be paid to the respondent. Accordingly, the impugned recovery proceedings are unjustified and ought to be quashed.

7. The learned counsel for the petitioner submits that proceedings before the R-2 was initially on behalf of respondent No. 1 – workman under Section 33 C (1) of the I.D. Act, 1947, the respondent No. 2 has not considered the representation or the calculations submitted by the petitioner showing that the requisite amounts have been paid. Indeed, the impugned order does not even mention the petitioner’s letter dated 17.07.2013 and 12.08.2013.

8. However, there is nothing readily available on the record to show that such representation was made by the petitioner before R-2 before the impugned order was passed.

9. In the circumstances, the writ petition is disposed off with the direction to the respondent No. 2 to consider this writ petition as a representation and pass appropriate orders within 12 weeks from today with due notice to the workmen. The impugned order is set aside and the case is remanded for it to be adjudicated afresh.

10. The Court has expressed no views on the merits of the case.

NAJMI WAZIRI, J

OCTOBER 18, 2016/acm