

\$~28

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

+ **W.P.(C) 208/2016**

%

Date of Judgment : 11.01.2016

EAST DELHI MUNICIPAL CORPORATION & ORS...Petitioners

Through : **Mr. Kumar Rajesh Singh, Standing
Counsel for EDMC.**

versus

RAKESH KUMAR

..... Respondent

Through : **None.**

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

C. M. APPL. 852/2016

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

W.P.(C) 208/2016

3. Challenge in this writ petition is to the order dated 17.11.2014 passed by the Central Administrative Tribunal by which the O.A. filed by the respondent has been allowed.
4. Learned counsel for the petitioner submits that the petitioner was working as a Leave Substitute Chowkidar, thus the Tribunal has erred in issuing a direction to include the name of the petitioner in the list of Daily Wages Chowkidar. Counsel submits that the respondent was engaged as Leave Substitute Chowkidar against leave vacancy during the period from 01.04.2000 to 31.03.2003. Counsel further submits that no doubt a list of Daily Wager has been prepared but since the respondent was a Leave Substitute Chowkidar, his name could not

have been included. Counsel submits that the learned Tribunal has erred in relying upon the judgment dated 22.01.2003 passed by the High Court of Delhi in the case of ***Babloo Sharma Vs. MCD & Ors.*** in W. P. (C) No. 8361/2002 and the subsequent order passed in Contempt Case (C) No. 1477/2005.

5. We have heard the learned counsel for the petitioner and also carefully examined the order passed by the Central Administrative Tribunal.

6. The Tribunal has allowed the O.A. and issued the following direction:

“25. In the circumstances and for the aforesaid reasons, the impugned orders in the respective OAs are quashed, and the respondents are directed to include the applicants at the appropriate places in the seniority list of daily wager chowkidars for the purpose of regularization and if any of their turn for regularization as chowkidar has already matured and became due, appropriate regularization orders be issued to them. However, in the circumstances, they are not entitled for any arrears. The respondents shall complete this exercise within three months from the date of receipt of this order. Accordingly, the OAs are allowed. No costs.”

7. The Tribunal has taken into consideration the fact that the respondent has worked as a Leave Substitute Chowkidar between the period from the year 2000 to 2003. The Tribunal has thereafter considered the present case in the light of the observations made by the High Court of Delhi in W. P. (C) No. 8361/2002 ***Supra*** more particularly the orders passed in the Contempt Case (C) No. 1477/2005.

8. We find no infirmity in the order passed by the Tribunal considering

the fact that the respondent herein has worked between the period from the year 2000 to 2003 simply because he has been termed as a Leave Substitute Chowkidar, it would not mean that he has to be placed differently than a Daily Wager Chowkidar as the work carried by both the categories is identical in nature.

9. In our view, since the petitioner already maintains a seniority list of Daily Wager Chowkidars, the only direction issued by the Tribunal is that the name of the respondent be also included in such a list.
10. We find no grounds to entertain the present petition under Article 226 / 227 of the Constitution of India. The writ petition is dismissed.

C. M. APPL. 851/2016 (Stay)

11. In view of the order passed in the writ petition, the application is also dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 11, 2016

SC