

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 07th July, 2017

Date of decision : 24th July, 2017

W.P.(C) 3184/2003

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through

Mr. Arun Birbal, Mr. Sanjay
Singh, Advocates.

versus

ITS WORK ASSISTANT THROUGH D.D.A. MAZDOOR
UNION

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, the Delhi Development Authority, vide the present petition assails an award dated 21.9.2000 in ID No.140/96 of the Industrial Tribunal-I, Karkardooma whereby the reference sent to the said Industrial Tribunal-I vide notification No. F.24(3664)/96Lab./42098-102 dated 2.9.1996 to the effect:

“Whether the demand of S/Shri Mukhya Nath, Kapil Kumar Saini, Anand Kumar Sharma, Virender Singh and Dev Singh for regularization /appointment as Lower Division Clerks is justified and, if yes, to what relief are they entitled and what directions are necessary in this respect?”

was answered to the effect that all the workmen named in the

reference were entitled to be regularized to the post of Lower Division Clerks from the respective dates of their engagement as stated by them in their respective affidavits and were further held entitled to be paid salary as permissible to their colleagues appointed on regular basis as Lower Division Clerks with the management, i.e., the Delhi Development Authority. The Delhi Development Authority was further directed to pay the said workmen the scale of Lower Division Clerks atleast from the date of regularization in the Group “D” posts to which all of the workmen concerned had admittedly been regularized after their official engagement on muster rolls as Work-Charge employees, i.e., Mukhya Nath w.e.f. 6.1.1983, Kapil Kumar Saini w.e.f. 3.1.1985, Anand Kumar Sharma w.e.f. 6.3.1984, Virender Singh w.e.f. 6.1.1983, Dev Singh w.e.f. 3.1.1985. It has been submitted by the petitioner that the said workmen were represented by the Delhi Development Authority Majdoor Union, arrayed as respondent No.1 to the petition.

2. Respondent No.2 arrayed on record is a proforma party, i.e., the Presiding Officer of the Industrial Tribunal-I, Karkardooma.

FACTUAL MATRIX

3. The petitioner has submitted that Sh. Mukhya Nath was initially appointed on the muster-roll as Khalasi w.e.f. 20.1.1981 and his services were converted into Work-Charge establishment vide letter bearing No. **F2(731) 83/HD-XIX/1068** dated 24.3.1983 and he was offered the post of Khalasi and he was called upon to report for duty after completion of formalities for the said post of Khalasi was accepted. The said workmen accepted the offer of the post of Khalasi. The petitioner further submits that the workmen Virender Singh was initially engaged on the muster roll as Beldar on the work at site and his wages were also paid in accordance with the concerned work.

As stated in the petition, Sh. Dev Singh was initially engaged on the muster roll as Khalasi on the work at site and his wages were also paid in accordance with the work executed; Kapil Kumar Saini was initially appointed as Beldar on the muster roll w.e.f. 22.11.1982 vide muster roll No. 2/AE-I/CPD/III/DDA/82-83. He was kept on the work of Assitant Beldar. Sh.Anand Kumar was also kept on the work of Assitant Beldar and his wages were paid in accordance with the work executed by him.

4. The petitioner further submitted that on several occasions

various orders were issued by the petitioner herein for transfer of surplus staff from one department to another and all the subject workmen were kept in different categories and had never been assigned the job of Lower Division Clerk. It was also the claim of the petitioners that as per their recruitment rules, the management has to appoint LDCs after conducting a written test after obtaining approval from the competent authority and these workmen have never qualified in written tests and typing tests and they have never been appointed as Lower Division Clerks by the competent authority.

The petitioners however stated that these workmen had the minimum qualification as Matriculate for the post of Khalasi (Beldar) which was also the qualification standard for appearing in the test of Lower Division Clerk.

It was submitted by the petitioner that it had regularized the services of the workmen Mukhya Nath as Khalasi herein above w.e.f. 6.1.1983, Kapil Kumar Saini w.e.f. 3.1.1985, Anand Kumar Sharma .w.e.f 6.1.1984, Virender Singh w.e.f. 6.1.1983 and Dev Singh w.e.f. 6.1.1985 with the consent of the workmen and they performed duties on the directions of the management in accordance with the work

assigned to them.

5. It was also further submitted by the petitioner that the work assistants of the Delhi Development Authority had raised a demand for revision of their pay-scale in accordance with the pay-scale of Lower Division Clerk and the claim was filed by the workmen on 14.2.1987.

6. The petitioner has further submitted that the petitioner is an independent body constituted under the Delhi Development Authority Act and there are specific provisions in the Act which empowers the management to make its rules and regulations regarding service conditions and terms of employment after passing resolution.

7. It was further submitted by the petitioner that the impugned award dated 21.9.2000 passed in ID No.140/1996 whereby the workmen named herein above had been directed to be paid the scale of LDC from the date of regularization in the Group 'D' posts, was wholly erroneous and did take into account that these workmen did not pass or qualify any written test followed by any typing test which was a mandatory requirement for an LDC and that the Industrial Tribunal had ignored the Delhi Development Authority Rules and

Regulations and service conditions and terms of appointment and that no appointment can be made *de hors* these rules and regulations.

8. The petitioner further submitted that there existed no industrial dispute between the parties.

9. The petition was instituted on 19.4.2003 and was initially dismissed in *limine* on account of delay and laches vide order dated 22.10.2003 and pursuant to the order in appeal No.885/2003 dated 24.8.2003, the writ petition was revived to be disposed of on merits. However vide order dated 2.3.2005 the application for interim stay being CM No.11941/2004 was dismissed and the award was directed to be implemented. It was further directed vide order dated 2.3.2005 that the implementation of the impugned award would be subject to the final outcome of the present writ petition.

CONTENTIONS RAISED

10. During the course of submissions made on behalf of the petitioner it was submitted that the impugned award dated 21.9.2000 was, however, not implemented, in as much as similar awards were set aside in WP(C) No.5140/2003, WP(C) No.1813/2004 and WP(C) No.4993/2000 filed by the petitioner vide the common judgment dated

20.12.2016 and the said verdict dated 20.12.2016 was upheld by the learned Division Bench of this Court vide judgment dated 31.01.2007 in LPA 66/2007 and in the connected appeals. It was submitted on behalf of the petitioner that this writ petition was also connected with the writ petition disposed off vide the same judgment dated 20.12.2006.

11. The proceedings dated 23.11.2004 in the present W.P.(C) 3184/2003, do indicate that there were connected matters in as much as it has been observed to the effect : -

“23.11.2004

***Present : Ms. Anusuya Salwan for the petitioner.
Mr. Varun Prasad for the respondent.***

+W.P. © No. 3184/2003

List on 29.11.2004 along with the connected matter.

November 23, 2004

m

sd-J.”

12. Through the counter affidavit of the respondent, it was contended that the W.P.(C) 3184/2003 was not maintainable as the respondents had been working for more than two decades as LDCs / Clerks / Typists and had not been regularized and that the Industrial

Tribunal had vide the impugned Award classified the proper grade of the workmen under the Industrial Disputes Act, 1947 as the employees since the time of their initial employment when they were taken on the muster roll, have been performing the duties of LDC Typists.

13. It has been submitted further thereby through the counter affidavit of the respondent that the petitioner i.e. the management herein had chosen to remain absent and was thus proceeded ex-parte after having filed its written statement and after issues were framed.

14. Reliance was placed on behalf of the respondent through its counter affidavit on the verdict of the Supreme Court in ***Bhagwati Vs. Delhi State Mineral Development Corporation 1990 1 LLJ, SC 320*** to contend that even though the employees did not have the requisite qualification to hold the post so as to entitle them for the post of LDCs, undisputably they had been working for a long period of time for two decades as LDCs and had discharged actually the duties attached to the said post which practical experience was sufficient for them to be regularized in the post of LDCs and that the period of work done by them of the post of LDCs was sufficient for their confirmation and regularization on the said post, in as much as though

they had been taken on the muster roll on 20.01.1981, 27.11.1982, 23.12.1981, 23.03.1980 and 18.08.1982 but they had been wrongly regularized as Beldars and Khalasis.

15. It was submitted through the counter affidavit of the respondents that the petitioner as per the recruitment rules has prescribed a minimum qualification as 'matriculate' and that all the respondents are matriculates and that there is also a prescribed quota for the promotion from Group D to Group C in the Establishment recruitment rules for the post of LDCs which can also be filled up by promotion from Group D to Group C. A further submission made through the counter affidavit by the employees was to the effect that the Central Government / Delhi Development Authority also as per the recruitment rules had the power to relax where it was necessary and expedient to do so in relation to all categories and posts. Interalia, it was submitted through the counter affidavit of the respondent that there were vacancies of the LDCs available with the petitioner and that the petitioner had not regularized the services of the workmen / respondents in order to exploit them by denying the benefits and fruits as regular workmen in the grade of LDCs, which is an unfair labour

practice under the Fifth Schedule of the Industrial Disputes Act, 1947.

16. None has appeared on behalf of the respondents / workmen on 09.01.2014, 15.01.2014, 05.02.2016, 19.02.2016 and 28.04.2016 also repeatedly.

17. None chose however to put in appearance on behalf of the respondents / workmen when the matter was taken up for regular hearing in the present writ on 06.07.2017, nor on 07.07.2017 when arguments were addressed on behalf of the petitioner.

18. During the course of the submissions made on behalf of the petitioner on 06.07.2017, it was submitted on behalf of the petitioner that the issue in the present writ has already been adjudicated by the judgment of the Division Bench of this Court and thus the matter was renotified for 07.07.2017 on which date reliance was placed on behalf of the petitioner on the verdicts of the learned Single Bench of this Court in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005, W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P. (C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P. (C) 4993/2000 which were disposed of vide a common judgment dated 20.12.2006 and on

the verdict of the Division Bench of this Court in ***Bijender Singh Vs. Delhi Development Authority dated 31.01.2007 in LPA 66/2007***, against the aforementioned verdict dated 20.12.2006, which was upheld, on the verdict of this Court in ***Rajbir Singh Vs. Delhi Development Authority 2007 (95) DRJ 300***, on the verdict of this Court in ***Delhi Development Authority Vs. Smt. Rani Verma & Ors. in W.P. (C) 6086/2000 dated 29.10.2014*** to submit that the impugned Award dated 21.09.2000 in I.D. No. 140/96 which answered the reference made vide Notification No. F.24(3664)/96-Lab/42098-102 dated 02.09.1996 to the effect that the employees namely Sh. Mukhya Nath, Sh. Kapil Kumar Saini, Sh. Anand Kumar Sharma, Sh. Virender Singh and Sh. Dev Singh were entitled to be regularized for the post of LDCs from the respective dates of their engagement as stated by them in their affidavit and they were entitled to be paid the salary as permissible to their cadre appointed on regular basis as LDCs with the management coupled with the fact that the petitioner had been directed to pay the workmen the pay scale of LDCs from the date of the regularization in the Group D posts to which all the workmen concerned had been regularized after the initial engagement on the

muster roll as *Work Charge Employees* i.e. Sh. Mukhya Nath regularized as Khalasi on 06.01.1983, Sh. Kapil Kumar Saini regularized as Beldar on 03.01.1985, Sh. Anand Kumar Sharma regularized as Beldar on 06.03.1984, Sh. Virender Singh regularized as Beldar on 06.01.1983 and Sh. Dev Singh regularized as Khalasi on 03.01.1985,- was erroneous and was liable to be set aside.

19. It is essential to observe that the common judgment dated 20.12.2006 relied upon by the petitioner relates to the workmen whose services were utilized for clerical work though they had been taken on the muster roll as Malis, Beldars, Security Guards. In the case of *Delhi Development Authority Vs. Smt. Rani Verma & Ors. in W.P. (C) 6086/2000 dated 29.10.2014* the employees had joined the post of Mate and worked on the said post and thus the claim of the employee that she had worked as a permanent employee in different electrical divisions as a stenographer and that she be regularized to the post of stenographer was not accepted observing to the effect that the principle of 'equal pay for equal work' cannot be applied by the Courts to direct that the permanent appointments be made without following the due procedure established under the law in view of the

verdict of the Supreme Court in *Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors; (2006) 4 SCC*.

20. The brief facts that have been detailed in the common judgment dated 20.12.2006 in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005, W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P. (C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P. (C) 4993/2000. have essentially to be spelt out which are : -

“2. The brief facts which gave rise to all these writ petitions are that a number of workmen were appointed as daily wager, muster roll employees, beldars, malis and on other class IV posts, long back at different periods of time. These beldars, malis etc. who were initially muster roll/daily wagers were regularised in the post of mali and beldar under the directions of this Court or as a result of awards passed by Tribunal or as a result of scheme formulated by the DDA under the directions of this Court or Supreme Court. A large number of workmen of class IV thus got recruited by way of regularization who were engaged by DDA for work exigencies or for different projects, these could not be disengaged due to stay orders given by Courts. However, with projects coming to an end the DDA could not find manual work for them and assigned them the jobs which were available in DDA. Many such workmen were asked to do the clerical work, because they were capable of doing the clerical work. These workmen were having regular posts of malis, beldars and security guards and were put on clerical work in different departments of DDA per force as otherwise

these workmen had to be paid salaries without work and kept idle at the cost of public exchequer. These workmen after doing clerical nature of work raised a dispute that now they have become entitled to be regularised as clerks and so, these disputes were referred for adjudication to Labour Courts/Tribunals. The Tribunals in some cases passed awards that they should be paid pay equal to that of LDCs and regularized, in some cases the awards were passed only of equal pay and they were held not entitled for regularisation. Some cases are those where the order of the DDA removing them from work of clerk and posting them as malis, security guards and beldars have been challenged. 3. These cases and other similar cases show a strange phenomenon. A number of people enter into the DDA, MCD and other similar departments through approach and contacts as Class IV employees on muster roll basis or daily wages basis. These employees then raise an industrial dispute about their regularisation on the post of malis, beldars etc. and in the past i.e. before Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. 2006 (4) SCC 1 case, they have been getting regularised due to different Court orders on the basis of length of service. None of these persons have been recruited in accordance with the recruitment rules. All these persons are back door entrants into the department. After their regularisation as Class IV employees despite back door entry then, they have approached the Courts for their regularization as Class III employees. The plea taken is that they fulfill the qualification of Class III employees and have been assigned the work of Class III employees and have been doing this work as clerk for quite long time, therefore, they are entitled for the pay scale of the clerks as well as regularisation in the post of clerk.”

21. It has been the plea of the petitioner in the present case also that

the workmen namely Sh. Mukhya Nath, Sh. Kapil Kumar Saini, Sh. Anand Kumar Sharma, Sh. Virender Singh and Sh. Dev Singh, who have been appointed as Khalasi, Beldars and Assistant Beldars by the DDA at various times for adjustment of surplus staff and that orders were issued by the petitioner for transfer of surplus staff from one department to another and that though they were kept in different categories they were never assigned the job of LDC and that none of them have ever qualified any written test or typing test and they have never been appointed as LDC by the competent authority and that their services cannot be held to be regularized for the appointment to the post of LDC in terms of the common judgment dated 20.12.2006 upheld in *Bijender Singh Vs. Delhi Development Authority in LPA 66/2007* by the learned Division Bench of this Court.

22. The findings of the issue no. 2 vide the impugned Award dated 20.12.2006 make it apparent that the respondents / employees had been taken on the muster roll as *Work Charge Employees*. It has been submitted on behalf of the petitioner that there is a difference between the person employed in the work charge establishment and posted in the regular establishment in as much as those working on the work

charge service cannot be regularized with employees working on the regular service of the establishment for the purpose of grant of the additional increment of ACP scales or promotion.

23. Reliance was placed by the petitioner on the observations in para 8 of the common judgment dated 20.12.2006 referred to hereinabove in the ***Bijender Singh Vs. Delhi Development Authority in W.P. (C) 4542/2005*** and other connected matters, which is to the effect : -

“8. The respondents have relied upon a circular dated 3.11.2004 showing that there was acute shortage of clerical staff and they were working as work charged employees against the clerical staff so they should be regularised. This circular shows that DDA had a lot of surplus workforce in Class IV and in order to utilize this workforce, which otherwise would have been unproductive, assigned this workforce to different projects as work charged employees so that there may not be any possibility of accrual of any claim of any difference of wages by such employees at a later stage. I consider that DDA has a right to manage its administrative work and the Court cannot thrust upon its decisions in the administrative matters on DDA. If DDA has surplus workforce due to whatever reasons, DDA has authority to utilize this workforce in most appropriate and optimum manner.”

24. Vide the common judgment dated 20.12.2006 in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005,

W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P. (C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P. (C) 4993/2000 reference was made to the recruitment regulations for the post of LDC qua which it was submitted on behalf of the petitioner that the same is still applicable which indicate that the method of recruitment whether by direct recruitment or by promotion or by deputation and percentage of vacancies to be filled by various methods, was as follows : -

***RECRUITMENT REGULATIONS FOR THE POST
OF LDC (ENGLISH) IN DELHI DEVELOPMENT
AUTHORITY***

***“10. Method of 75% by direct recruitment
recruitment: whether by direct (50% by direct by
recruitment or by promotion or recruitment or by LDC-cum-
recruitment or by deputation Typist and 25% LDC-cum-
and percentage of vacancies to Hindi Typist 25% Promotion
be filled by various method from regular Group 'D'
employees (15% by simple
test and 10% by Seniority-
cum-”***

25. It is essential to observe that vide para 6 of this the common judgment dated 20.12.2006 in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005, W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P.

(C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P.

(C) 4993/2000, it was observed as follows : -

“ 6. It is also not disputed that none of the workmen had been recruited either directly or through promotion for the post of LDC. The workmen claim that they were made to work as work charge LDCs, under the orders of DDA and since they have worked for quite long time on the post of clerks, they have become entitled for being appointed as LDCs. I consider this argument must fail. All of the workmen, who have approached the Court have already been regularised either under the Court order or under a scheme formulated under the Court orders as malis, beldars, security guards etc.. They cannot approach the Court for second regularisation in higher post on the plea that they have worked at the higher post. A big work force, which should have been discharged after the projects were over, got thrust upon DDA due to Court orders irrespective of the fact whether there was work or not. It is an administrative problem for DDA as to what to do with this work force when no project is going on. If, in order to utilize this man-power, the DDA has assigned them clerical work no fault can be found with DDA. There can be only two options with DDA. One DDA should pay salary to the employees without work or DDA should have assigned them the work available and wherever it was available. DDA runs several projects and it gets budget as per projects. The salary of work charge employees is charged from those budget. In order to accommodate these Class IV employees, who were regularised from daily wagers, DDA assigned them to different projects on work charged basis and assigned clerical duties to them. This administrative exercise was necessary for DDA so that a large workforce may not sit idle unproductively. This would not give any right to the workmen to claim status of a higher rank/grade or regularisation in higher rank / grade. A person, holding

a post of Class IV, draws salary against the post sanctioned on which he is appointed. The creation of post and abolition of post is an executive function and Court cannot order creation or abolition of posts. The executive has to assess the quantum of work and create or abolish posts accordingly. By the mode of regularisation of daily wager into Class IV employees or Class IV employees as Class III and Class III to Class II and then Class II to Class I, the Courts would in fact be creating the posts where non-exist and also simultaneously creating a new procedure of recruitment. By this procedure, the Court would be violating the basic mandate of the Constitution enshrined in Article 14 of equality before law. The persons who entered through back doors, would always be the beneficiary and those persons who work hard and prepare for competition would be the losers because there would be no posts to be filled by them and all posts, in this manner would be got filled through back door entrants only. In Uma Devi (3) case, Supreme Court specifically directed that High Courts acting under Article 226, should not ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional schemes.”

26. The reliance placed by the employees on the verdict of the Supreme Court in ***Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Ltd.*** 2006 (6) SCC 310, was dealt with vide the following observation that the said common judgment dated 20.12.2006 to the effect : -

“wherein the Supreme Court observed that even in Umadevi Case Supreme Court has directed the Union of India, the State Governments and their instrumentalities

should take steps to regularise as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under the cover of the orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up”.

27. It was observed vide the common judgment dated 20.12.2006 in ***Bijender Singh Vs. Delhi Development Authority in W.P. (C) 4542/2005*** and the connected writ petitions that the contention that was raised on behalf of the employees that since they had worked as clerks they should be given the salary of clerks was not accepted vide the said common judgment dated 20.12.2006 in view of the verdict of the Supreme Court in ***State of Haryana v. Jasmer Singh AIR 1997 SC 1788*** wherein it was held:

“The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen

for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.(para 10)”

28. It was further categorically observed vide para 10 of the said verdict of the common judgment dated 20.12.2006 in ***Bijender Singh Vs. Delhi Development Authority in W.P. (C) 4542/2005*** and the connected writ petitions to the effect “*that the workmen who were holding regular posts of malis, beldars and security guards would not become entitled to be regularized as LDC because they have been deputed as work charge employees on different projects to do clerical work and they hold some permanent post and each person is entitled to the pay of that permanent post on which the principle of equal salary for equal work would not apply in this case because the quality of work done by an LDC, who comes through recruitment procedure is always different from the quality of work done by a person, who is a class IV employee.*”

29. Vide the said common judgment dated 20.12.2016, the writ petition against orders of Tribunals / Labour Courts filed by the DDA were allowed and the workmen were held not entitled to be regularized as LDCs nor they were held entitled to the salary of LDCs. Further, the writ petitions of the workmen challenging their posting /

transfer to class IV posts and to which they belong were dismissed and the writ petition of the workman against the orders of the Tribunal denying the relief of regularization / equal pay were also dismissed.

30. Thereafter, the learned Division Bench vide its verdict dated 31.01.2007 in LPA 66/2007 dismissed the appeal filed against the said judgment dated 20.12.2006 and it was observed that the learned Division Bench found no reason to take a different view than what was taken by the learned single Judge, in the cases referred to hereinabove. It is considered appropriate to reproduce the entire order dated 31.01.2007 in LPA 66/2007, which is as under : -

“LPA 66/2007

This appeal is directed against the judgment and order dated 20th December, 2006 passed by the learned Single Judge dismissing the writ petition filed by the appellants herein. The appellants were engaged by the respondent as Mali/Beldar at different points of time without following the procedure laid down for recruitment to the said post of Mali/Beldar. The initial appointments of the appellants were irregular and illegal and in violation of the Recruitment Rules.

Officers of the respondent did not stop at that but went on to take work of Group-C post from the appellants. Group-C posts can be filled up in accordance with the Recruitment Rules. Copy of the Recruitment Rules for appointment to the post of LDC has been placed on record. 75% recruitment to the said post, in the pay scale of Rs.3050-4590 is by direct recruitment and 25% posts are to be filled up by way of promotion

from regular Group-D employees. Minimum educational qualifications are also prescribed under the Recruitment Rules. A person must have 60% marks in Matriculation or a second division at Graduation. In addition, he should know typing. In case of promotion from Group-D employees, requirement of minimum marks is not applicable but such employee must meet the educational qualifications.

The appellants herein cannot claim themselves to be regular Group-D employees. Therefore, as per Recruitment Rules they could not have been promoted as LDCs. Promotion from Group-D as per Recruitment Rules is by simple test (15%) and 10% by seniority. It appears that the appellants were not only engaged through back door without selection but were also given promotion through back door by some of the officers of the respondent who are responsible for the present anomalies.

It is stated by the counsel for the respondent that though the appellants were discharging some functions of LDC, they were not being paid salary of the said post. There is no explanation forthcoming from either of the parties as to why this situation had arisen and why no action was taken by the respondent for filling up vacancies of LDC, if there be any, through regular prescribed procedure under the Rules. Under no circumstances the appellants could have been given promotion as LDC. The action of the respondent is in complete violation of and in disregard of the Recruitment Rules. Wrong and illegal appointments made have to be corrected and cannot be given stamp of approval by this Court.

Counsel for the appellant at one stage sought to submit before us that there could be relaxation of the Rules so as to give benefit to the appellants. We see no reason as to why such benefit should be given to persons who have been appointed irregularly and without being eligible for such appointment. The appellants have never

been declared as regular Group-D employees by the respondent. They could not have been promoted to Group-C posts de hors and contrary to the Recruitment Rules. Claim and rights of the citizens to compete and apply for selection cannot be denied. Similarly, rights of Group-D employees to be considered for promotion to the post of LDC cannot be ignored.

We, therefore, direct the Vice Chairman of the DDA to cause an inquiry to be conducted as to how such appointments were made and allowed to continue. Action should be taken against the officers responsible. The Vice Chairman shall file a report in this regard within four weeks from today.

So far as the appeal is concerned, for the foregoing discussions, we find no reason to take a different view than what was taken by the learned Single Judge, in the facts and circumstances of this case. The appeal has no merit and is dismissed.

For consideration of the report to be filed by the Vice Chairman, DDA, the matter shall be listed on 5th March, 2007."

31. Thus whilst observing to the effect that under no circumstances, the appellants of that case could have been given a promotion to the post of the LDC and that the applicants could not claim themselves to be regularized group D employees and could not as per the recruitment rules be promoted as LDCs, it was further observed by the Division Bench that wrong and illegal appointments made had to be corrected and cannot be given the stamp of approval by this Court. The plea raised on behalf of the applicants in that case seeking

relaxation of the Rules so as to give benefit thereof to the appellants was also repelled, it having been observed that there was no reason as to why such benefits could be given to the persons who had been appointed irregularly and without being eligible for such appointment, it having been further observed that the appellants had never been declared as regular Group D employees by the respondent i.e. DDA and that they could not have been promoted to Group 'C' posts contrary to the Recruitment Rules and that the claims and rights of the citizens to compete and apply for selection could not be denied and likewise the rights of Group D employees to be considered for promotion to the post of LDC could not be ignored.

32. In terms of the judgment dated 31.01.2007 in LPA 66/2007, the affidavit of Vice Chairman, DDA was submitted which was considered vide proceedings dated 20.04.2007 by the learned Division Bench of this Court in LPA 66/2007, LPA 100/2007, LPA 101/2007 & LPA 102/2007 in which it was stated by the then Vice Chairman, DDA that there were no Group D employees working as LDC with the DDA and that an enquiry had been ordered by the Vice Chairman himself in terms and in view of the observations made by the learned

Division Bench of this Court in the order dated 31.01.2007 in LPA 66/2007.

33. Vide order dated 20.04.2007 in LPA 66/2007, LPA 100/2007, LPA 101/2007 & LPA 102/2007, the Court closed the matter with a direction to the Vice Chairman, DDA to continue with the enquiry proceedings and to bring it to a logical end **and further directed that in future appointments of LDCs had to be in accordance with the Rules and Regulations.**

34. The verdict of this Court in *Rajbir Singh Vs. D.D.A. 2007 (95) DRJ 300* is in facts *pari materia* to the facts of the instant case in which the workman was in employment with the DDA as a daily wager w.e.f. 20.01.1981 and worked as Beldar and was paid wages for the same from 20.03.1981 to 05.01.1983 and w.e.f. 06.01.1983, the petitioner was made a 'work charged' Beldar and thereafter w.e.f. 19.03.1991, he was assigned duties of an LDC with the respondent / DDA and on which, the workman therein claimed that he had to be paid wages in the pay scale of Rs.950-1500 which was applicable for LDC / Typist which is a Class-C post instead of Rs.750-940 which was the prescribed pay scale for Class-D employees which

claim was rejected by the respondent management whereafter the workman had served a demand notice dated 11.03.1995 on the respondent / management and on 13.03.1995 the petitioner workman filed a statement of claim before the Labour Commissioner and on failure of the conciliation proceedings, the matter was referred for adjudication to the Industrial Tribunal on 03.07.1997 with a reference to the effect:-

“Whether the demand of Shri Rajbir for regularization of his services as Beldar w.e.f. 20.01.1981 is justified and if so, to what relief is he entitled and what directions are necessary in this respect”

in relation to which a Corrigendum was issued in 2014 with the following terms of reference : -

“Whether the management assigned the duties of L.D.C. to Sh. Rajbir w.e.f. 19.03.01 and if so whether his services should be regularized as such in the proper pay scale along with consequential benefits and if so what directions are necessary in this respect?”

35. The Industrial Tribunal vide its Award dated 20.07.2006 in the said case decided both the issues against the petitioner which Award was challenged in W.P. (C) 706/2007. The contention raised on behalf of the DDA in this case of ***Rajbir Singh Vs. D.D.A. 2007 (95) DRJ 300*** was reiterated in the present writ before this Court submitting to

the effect that the workmen namely Sh. Mukhya Nath had already been regularized as Khalasi on 06.01.1983, Sh. Kapil Kumar Saini had already been regularized as Beldar on 03.01.1985, Sh. Anand Kumar Sharma had already been regularized as Beldar on 06.03.1984, Sh. Virender Singh had already been regularized as Beldar on 06.01.1983 and Sh. Dev Singh had already been regularized as Khalasi on 03.01.1985, could not now seek regularization for a second time for the post of LDCs. It was submitted on behalf of the DDA / the petitioner placing reliance on ***Rajbir Singh Vs. D.D.A. (supra)*** that as none of them had ever qualified any written test or typing test and had never been appointed as LDCs by the competent authority and their services cannot be held regularized for the appointment to the post of LDCs and that the principle of 'equal pay for equal work' was not a rigid principle nor a straitjacket formula so as to be blindly applied to each and every matter and that fixation of pay and parity in duties and responsibilities is only for the tribunal or court to decide. It is observed further vide para 16 of the said verdict in ***Rajbir Singh Vs. D.D.A. (supra)*** to the effect that : -

“16. In the light of the judgment of the Supreme Court in Uma Devi (supra), it is now settled that recruitment to regular posts

ought not to be made by bypassing the constitutional scheme of recruitment. In the present case, there are already rules of recruitment existing for recruitment to the posts of LDC/UDC and therefore the petitioner cannot be regularized to the said post in violation of the constitutional scheme.”

36. It was also observed in this case in ***Rajbir Singh Vs. D.D.A.*** (*supra*) to the effect that the verdict of the Supreme Court in ***State of Haryana Vs. Chiranjit Singh and Others***, (2006) 9 SCC 321 had laid down that the verdicts in the cases of ***Jasmer Singh*** (*supra*), ***Surinder Singh Vs. Engineer-in-Chief, CPWD***, (2003) 6 SCC 123, ***Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty***, (2003) 5 SCC 188 and ***Govt. of West Bengal Vs. Tarun K. Roy*** (2004) 1 SCC 347, laid down the correct law to the effect that the principle of ‘equal pay for equal work’ has no mechanical application in every case.

37. It was also observed in this case in ***Rajbir Singh Vs. D.D.A.*** (*supra*) to the effect that the petitioner in that case had not gone through the process of recruitment and thus could not claim to the principle of ‘equal pay for equal work’ and merely because a ***Work Charge Beldar***, he was assigned the duties of LDC by the respondent / management in that case and it was observed to the effect that : -

“Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out and the very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. Thus normally applicability of the said principle must be allowed to be evaluated and determined by an expert body.”

38. The verdict of Single Bench of this Court in W.P. (C) 6086/2000 in Delhi Development Authority Vs. Smt. Rani Verma & Ors. dated 29.10.2014 also laid down that a backdoor entry into the regular service to a post in which an employee has to qualify, cannot be allowed by way of regularization of workmen to the post of LDC, who had otherwise not been reunited directly or through promotion on to the said post.

ANALYSIS

39. It is apparent thus that as rightly contended on behalf of the petitioner that the facts of the case of the employees namely Sh. Mukhya Nath, Sh. Kapil Kumar Saini, Sh. Anand Kumar Sharma, Sh. Virender Singh and Sh. Dev Singh who were taken on the muster roll on 20.01.1981, 27.11.1982, 23.12.1981, 23.03.1980 and 18.08.1982 respectively and Sh. Mukhya Nath regularized as Khalasi on 06.01.1983, Sh. Kapil Kumar Saini regularized as Beldar on

03.01.1985, Sh. Anand Kumar Sharma regularized as Beldar on 06.03.1984, Sh. Virender Singh regularized as Beldar on 06.01.1983 and Sh. Dev Singh regularized as Khalasi on 03.01.1985 as was also observed by the impugned Award dated 21.09.2000 are in *pari materi* to the cases of workmen disposed of vide the common judgment dated 20.12.2006 of this Court in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005, W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P. (C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P. (C) 4993/2000, which judgment has been upheld vide judgment dated 31.01.2007 in LPA 66/2007 and the verdict of this Court in ***Rajbir Singh Vs. D.D.A. (supra)*** and in ***Delhi Development Authority Vs. Smt. Rani Verma & Ors. (supra)*** to which the ratio of the verdict of the Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. 2006 (4) SCC 1* would apply.

40. During the course of the hearing on 07.07.2017 in reply to a specific Court query, it was submitted on behalf of the petitioner by the learned counsel for the petitioner that the workmen Sh. Mukhya Nath, Sh. Kapil Kumar Saini, Sh. Anand Kumar Sharma, Sh. Virender

Singh had been regularized as Beldars and Sh. Dev Singh had been regularized as a Khalasi with the petitioner.

41. In response to a further Court query raised by this Court in view of 6th Pay Commission having been implemented w.e.f. 01.01.2006 which recommended that all Group D posts would stand upgraded by Group C post as consequence of which there is no Group D post w.e.f. 01.06.2006 and the consequential implications thereof by removal of Class D post which are converted to Multi Tasking Staff post with a common designation into Group C pay band, it was further submitted on behalf of the petitioner that despite the recommendation of the 6th Pay Commission, the ratio of the verdicts relied upon on behalf of the petitioner are still applicable to the facts of the instant case in as much as the workmen hereunder can only be promoted as per rules.

42. It was further submitted on behalf of the petitioner that there is difference between those employees working as **Work Charge Employee** and those working as 'Regular Employees' and that the employees in the instant case were working as **Work Charge Employee** and cannot be treated as part of regular service in as much as there is a salary distinction between the appointment made on work

charge basis and regular basis.

43. In relation to this aspect, it is essential to advert to the verdict of the Supreme Court in *State of Haryana and Ors. Etc. Etc. Vs. Sita Ram and Ors. Etc. 2014 IT AO (SC) 22* wherein the distinction between the work charge establishment and regular establishment as detailed in *State of Rajasthan Vs. Kuji Raman (1997) 2 SCC 517* has been brought forth to the effect that : -

“A work-charged establishment as pointed out by this Court in *Jaswant Singh Vs. Union of India (1979) 4 SCC 440* broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to “works”. The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

A work-charged establishment thus differs from a regular establishment which is permanent in nature, Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a “work” and availability of funds for executing it. So far as employees engaged in work-charged establishments

are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government.”

44. The aspect of the work charge service not being synonymous with regular service and the aspect whether two services can be clubbed for grant of time bound promotional scale / increment etc. was also referred to through the verdict of Supreme Court in this case placing reliance on the observations in ***Punjab State Electricity Board Vs. Jagjiwan Ram*** (2009) 3 SCC 661 where it has been observed to the effect that : -

“Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of

engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees.

The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.”

45. In view thereof, it is apparent that the **work charge employee** cannot claim benefit of service done for the purpose of fixation of seniority in a regular cadre nor promotion to the higher post, nor fixation of pay in the higher scales nor grant of increment etc. in as much as the workmen's service in the work charge establishment as in

the present case cannot be clubbed with service in a regular establishment without a specific provision to that effect in as much as the sources and mode of engagements / recruitment of ***work charged employees***, their pay and condition of the employees are all together different from the persons in the regular establishment against sanctioned posts after following procedure prescribed under the Act or Rules and their duties and responsibilities are substantially allowed from those of regular employees.

46. It is apparent that the ratio of the common verdict of this Court in W.P. (C) 4542/2005, W.P. (C) Nos. 3015-16/2005, W.P. (C) No. 1721/2005, W.P. (C) Nos. 1234-36/2005, W.P. (C) Nos. 18406-09/2004, W.P. (C) Nos. 12784-91/2004, W.P. (C) 5140/2003, W.P. (C) 11813/2004, W.P. (C) 5140/2003 and W.P. (C) 4993/2000 upheld in LPA 66/2007 by the learned Division Bench of this Court applies to the facts of the instant case also where the employees Sh. Mukhya Nath regularized on 06.01.1983, Sh. Kapil Kumar Saini regularized on 03.01.1985, Sh. Anand Kumar Sharma regularized on 06.03.1984, Sh. Virender Singh regularized on 06.01.1983 and Sh. Dev Singh regularized on 03.01.1985 were regularized as ***work charge***

employees and thus they cannot be clubbed with the services of DDA / the petitioner in its regular establishment nor with the benefit of their having worked like LDCs from the date of regularization as Beldars and Khalasis, neither for the purposes of fixation of seniority in the regular cadre nor promotion to higher posts nor for grant of any increment.

CONCLUSION

47. Thus the W.P.(C) 3184/2003 is allowed and Award dated 21.09.2000 in I.D. no. 140/1996 is set aside.

48. In the circumstances of the case, there is no order as to costs.

JULY 24th, 2017
sv/mk

ANU MALHOTRA, J