

\$~38

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

%

Date of Decision: 02nd August, 2019

+ W.P.(C) 9572/2018

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Eshita Baruah, Advocate for
Mr. Guarang Kanth, Advocate.

versus

OM PRAKASH & ORS Respondents

Through: Ms. Sugandh Kochhar, Advocate for
Mr. Rajiv Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the award dated 31st July, 2006 and the recovery certificate dated 14th August, 2018 for implementation of the same whereby the Industrial Tribunal directed the washing allowance to be disbursed to the workmen at the rate of Rs.60/- per month with effect from 20th July 1993.

2. The C and D category employees of the petitioner raised an Industrial dispute claiming enhancement of their washing allowance from Rs.15/- per month to Rs.60/- per month on the ground that the C and D category employees of hospitals/medical institutions were being paid washing allowance of Rs.60/- per month w.e.f. 20th July, 1993.

3. The petitioner defended the claim on the ground that the working conditions of C and D category employees in the hospitals cannot be equated with the employees in the other departments. The petitioner follows Central Government orders with respect to the allowances payable to its employees. On 22nd June, 2000, the petitioner enhanced the washing allowance on C & D category employees working in the hospitals from Rs.15/- per month to Rs.60/- per month w.e.f. 20th July, 1993. With respect to the employees other than the hospital employees, washing allowance of Rs.15/- per month was increased to Rs.30/- per month w.e.f. 01st August, 1997 vide circular dated 14th September, 2001.

4. The Industrial Tribunal held that there was no justification for discrimination between C and D category employees working in hospitals and other C and D category employees and the Industrial Tribunal directed the petitioner to pay washing allowance to all C and D category employees at the rate of Rs.60/- per month with effect from 20th July, 1993.

5. Learned counsel for the petitioner urged at the time of hearing that that the work of the employees working in hospitals cannot be equated with other employees as the nature of work and duties of the hospital employees is different from other employees. It is further submitted that the principle of equal pay for equal work would not apply in the present case as the nature of work and duties of the two categories of employees are different.

6. Learned counsel for the respondents urged at the time of the hearing that C and D category employees whether working in hospitals/medical institutions or any other department, are doing the same work and are discharging the same duties. There is no difference in their qualification and/or in the nature of work. It is further submitted that disparity in payment

of washing allowance is in complete violation of the principle of equal pay for equal work. It is further submitted that the pay scale prescribed by the Central/State Government is not binding on MCD. It is further submitted that the MCD admitted before the Industrial Tribunal that the washing allowance of all C and D employees has been increased to Rs.60/- per month with effect from 20th July, 1993.

7. Learned counsel for the petitioner urged at the time of the hearing that the petitioner never admitted before the Industrial Tribunal that the washing allowance of all C and D category employees has been enhanced to Rs.60/- per month with effect from 20th July, 1993 and the Industrial Tribunal erred in recording the same. It is further submitted that the petitioner has placed on record the copy of O.M. No.257/AO(H)/EC(F)/2000 dated 22nd June, 2000; O.M. No.14/9/95-JCA dated 12th December, 2000; Circular No. F4(34)/CA/F&G/2001 1186 dated 14th September, 2001; Standing Committee resolution No.393 dated 22nd August, 2001 and Decision No.5349/GW/Corp dated 17th June 1996.

8. This Court is of the view that the nature of work of the C and D employees posted in the hospitals is different from the other employees. The work of the hospital employees is extremely arduous in nature. The nature of work of hospital staff are exposed to patients affected with communicable diseases, handling of infected materials, instruments and equipments which could spread infections from human tissues or organs, through blood and other body fluids, pathological fluids and discharges, biochemical and microbiological samples. The nature of work also involves routine handling, exposure and contact with other hazardous samples like toxic, corrosive, inflammable, reactive or injurious substances, chemicals and radiations.

Routine contact with patients due to the nature of work of the above said categories may lead to accidental or inadvertent transmission of communicable disease to these employees. Such constant and continuous exposure while discharging their official duties renders them vulnerable and susceptible for acquiring debilitating and life threatening communicable diseases. Further these employees are at a high risk of contacting hospital related infections from the patients or through other biohazards.

9. This Court is satisfied that payment of higher washing allowance to the hospital staff is founded on intelligible differentia which has a rational nexus to their nature of work and there is no infirmity in the payment of higher washing allowance to the C and D category employees in the hospitals. With respect to the admission of the petitioner noted by the Industrial Tribunal, it is noted that the petitioner nowhere admitted the respondent's claim either in their written statement or in their evidence. The petitioner placed on record all the relevant circulars in support of their defence. The admission of the petitioner appears to have been wrongly recorded by the Industrial Tribunal. The admission of the petitioner recorded by the Industrial Tribunal is therefore, set aside.

10. The writ petition is allowed and the impugned award as well as the recovery certificate is hereby set aside.

11. Copy of this judgment be given *dasti* to learned counsel for the parties under signature of Court Master.

J.R. MIDHA, J.

AUGUST 02, 2019

dk