

\$~R-15

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

Date of decision: 23.01.2019

+ **W.P.(C) No.12175/2015**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Biji Rajesh, Adv.

versus

NIRANJAN & ANR. Respondents

Through: Mr.Rajiv Aggarwal, Adv. for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner/North Delhi Municipal Corporation impugns a recovery certificate dated 02.12.2015 issued by the respondent no.2/Deputy Labour Commissioner, Govt. of NCT of Delhi for a sum of Rs.4,39,662/-, which amount was found to be payable to the respondent no.1 in pursuance to the award dated 07.03.2002 passed in ID No.204/1988. As per the aforesaid Award, the respondent's retirement at the age of 53 years was held to be illegal and the petitioner was directed to pay the respondent no.1 75% arrears of pay and arrears of revised pension, as if he had actually worked till he attained the actual age of superannuation, i.e., 60 years. The amount of monthly pension already paid was, however, directed to be deducted from the amount payable to the respondents.

2. Learned counsel for the petitioner states that pursuant to the Award, the petitioner had made certain payments to the respondents

but the respondent being not satisfied with the same, had moved an application under Section 33(C)(1) of the Industrial Disputes Act, 1947 before the Deputy Labour Commissioner/respondent no.2, annexing therewith a statement of accounts showing the calculation of the amount payable to him on account of arrears of difference of pension for the period from 01.03.2006 to 31.07.2015. While stating that there is no dispute qua the amount paid to the respondent no.1, for the period upto 28.02.2006, she submits that respondent no.2 had simply accepted the respondent no.1's calculation without applying his mind as to basis thereof. She, thus, contends that the impugned recovery certificate suffers from non-application of mind and, therefore, prays that the writ petition be allowed and the said recovery certificate be quashed.

3. On the other hand, Mr.Rajiv Aggarwal, learned counsel for the respondent no.1 states that once the petitioner did not file any objections or reply to the application filed by the respondent no.1 seeking difference of arrears of pension for the period 01.03.2006 to 31.07.2015, the respondent no.2 was fully justified in accepting the calculation furnished by the respondent no.1 which accordingly to him was based on the actual pension payable to respondent no.1.

4. Having considered the submissions of learned counsel for the parties, I am of the view that once the petitioner itself did not bother to file any response to the application under Section 33(C)(1) preferred by the respondents, the Deputy Labour Commissioner/respondent no.2 cannot at all be faulted for accepting the calculation furnished by the respondent no.1/workman. However,

keeping in view the fact that there is nothing on record to show the amount of basic pension to which the respondent no.1 was entitled and in the light of the petitioner's contention that the amount of basic pension claimed by the respondent no.1 in his application before the Deputy Labour Commissioner was wrong and was much more than what he had himself claimed in similar proceedings qua the earlier period, it would be in the interest of justice that subject to payment of costs, the petitioner be granted another opportunity, as prayed for, to demonstrate before respondent no.2 that the respondent no.1's calculations filed along with the application were erroneous. Mr. Aggarwal, learned counsel for the respondent no.1 fairly does not oppose the said prayer. He, however, states that in case the matter is remanded back to the Deputy Labour Commissioner, the Deputy Labour Commissioner may be directed to take a decision on the respondent no.1's claim in an expeditious manner.

5. Accordingly, with the consent of the parties, the impugned recovery certificate is set aside, subject to the petitioner paying a sum of Rs.25,000/- as costs to the respondent no.1 and the matter is remitted back to the Deputy Labour Commissioner for a fresh determination of the amount payable to respondent no.1 towards arrears of pension in accordance with the Award.

6. The petitioner is granted liberty to file within one week, its reply/objections to the respondent no.1's application before the Deputy Labour Commissioner along with a copy of this order. Respondent no.1 would be at liberty to file a rejoinder thereto within one week thereafter. The Deputy Labour Commissioner/respondent

no.2 will thereafter decide within one month, the respondent no.1's aforesaid application by following principles of natural justice.

7. Since the matter is now being remitted back to the Deputy Labour Commissioner, the respondent no.1 would also be free to point out the deficiencies, if any, in respect of the arrears of pension w.e.f. 01.08.2015 till 31.01.2019 and the same will also be considered by the respondent no.2 while passing the fresh order/issuing the recovery certificate.

8. The petition is disposed of in the aforesaid terms.

9. Needless to state that in case any of the parties are aggrieved by the order passed/recovery certificate issued by the Deputy Labour Commissioner/respondent no.2, it will be open for them to take legal recourse as permissible under law.

10. A copy of this order be given dasti under the signatures of the Court Master.

(REKHA PALLI)
JUDGE

JANUARY 23, 2019/gm