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

% *Date of Judgment : 05th March, 2020*

+ W.P.(C) 1197/2020
S. CHELLAIAH & ORS Petitioners

Through Mr. M.K. Bhardwaj, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL & ANR Respondents

Through Mr. Jagdeep Kumar Sharma, ASC
with Mr. Nirvikar Verma, ASC and
Mr. Mahesh Singh, Advocates for
respondents No.1 and 2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present writ petition is filed against order dated 07.10.2019 passed by the Central Administrative Tribunal ('Tribunal') in C.P. No.87/2019. Petitioner herein filed a contempt petition alleging willful disobedience of directions contained in order dated 20.09.2018 passed by the Tribunal in O.A. No.3575/2018. Order dated 07.10.2019 reads as under:

"At the outset, learned counsel for the respondents submits that in compliance of the directions of this Tribunal dated 02.09.2018 in aforesaid OA No.3575/2018, the respondents have passed a speaking and reasoned order dated 05.10.2019 and a copy thereof has already been issued to the petitioners and another copy thereof, has been given to Sh. M.K. Bhardwaj, learned counsel for the petitioners.

2. *In view of the aforesaid, the present Contempt Petition is closed. Notices issued to the respondents are discharged.*

However, the petitioners shall be at liberty to avail the legal remedies, if the grievances, if any, still survive, in accordance with law.”

2. Mr. Bhardwaj, learned counsel appearing for the petitioners submits that the respondents have failed to consider the representation of the petitioners in the right perspective. He further submits that the petitioners have been discriminated against in the matter of granting to them Delhi Transco Ltd. (DTL) replacement scale at par with their counterparts in the Engineering Cadre, without any justification and in contravention of the decision of the NDMC itself. Comparative charts detailing the grant of Pay Scales of Civil and Horticulture Cadre have been handed over in court, which we reproduce below:

Pay Scales as per 5th CPC

Name of the Post	Pay Scale	Name of the Post	Pay Scale
AE (Civil)	6500-200-10500	Assistant Director (Hort.)	6500-200-10500
EE(Civil)	10000-325-15200	Dy. Director (Hort.)	10000-325-15200
SE (Civil)	12000-16500-14300-18300	Director (Hort.)	12000-16500-14300-18300

Pay Scales as per 6th CPC

Name of the Post	Pay Scale	Name of the Post	Pay Scale
AE (Civil)	9300-34800 with Grade Pay of Rs. 4600	Assistant Director (Hort.)	9300-34800 with Grade Pay of Rs. 4600
EE(Civil)	15600-39100 with Grade Pay of Rs. 6600	Dy. Director (Hort.)	15600-39100 with Grade Pay of Rs. 6600
SE (Civil)	15600-39100 with Grade Pay of Rs. 7600	Director (Hort.)	15600-39100 with Grade Pay of Rs. 7600

Details of DTL replacement scale

Name of the Post	Pay Scale	Name of the Post	Pay Scale
AE (Civil)	19000-39100 with Grade Pay of Rs. 5400	Assistant Director (Hort.)	19000-39100 with Grade Pay of Rs. 4800
EE(Civil)	19000-39100 with Grade Pay of Rs. 7600	Dy. Director (Hort.)	19000-39100 with Grade Pay of Rs. 6600
SE (Civil)	37400-67000 with Grade Pay of Rs. 8900	Director (Hort.)	37400-67000 with Grade Pay of Rs. 7600

3. Mr. Bhardwaj submits that the Pay Scales of both the Departments/Cadres i.e. Civil and Horticulture Cadre were identical not only during the 5th Central Pay Commission (CPC) but also during 6th CPC; and the same were disturbed only while granting DTL Pay Scales. Mr. Bhardwaj submits that historically there has been parity between Civil and Horticulture Cadre and there is no reason for the differentiation created now while granting DTL Pay Scales. He submits that the action of the respondents is arbitrary; and only assailing the impugned order passed in the contempt petition would lead to multiplicity of proceedings. He submits that in view of order dated 20.09.2019, the respondents be directed to consider the representation of the petitioners with due seriousness and in the light of the submissions made.
4. Counsel for the respondents submits that the representation of the petitioners was rejected for justifiable reasons which form part of rejection order dated 05.10.2019.
5. We have heard learned counsel for the parties.

6. It is evident that historically there has been parity in the pay scales of the Civil and Horticulture Cadres;
7. Accordingly, we allow the writ petition in part, with a direction to the respondents to consider and decide the representation of the petitioners within a period of three months, keeping the above factor in mind, and also in line with Office Order dated 20.10.1994 issued earlier by the NDMC, which we reproduce below:

**“NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
CIVIL ENGG. ESTT. UNIT-I**

C.O.N. Engg/Estt-I/4283/GC-I dated 20.10.1994

OFFICE ORDER

Consequent upon sanctioning of higher pay scale to Junior Engineer (Civil) and S.O. (Horticulture) by the Govt. of India Ministry of Urban Development in their letter No.12014/2/87-EW-2 dated 22.3.91 and with the approval of Special Officer, NDMC, the Jr. Engrs.(Civil) and S.Os (Hort.) of NDMC on their completion of 5 years service in the existing entry grade pay scale of Rs.1400-40-1000-EB-50-2300 (Pro-revised pay scale of Rs.425-15-500-E.B.-15-560-20-700) earlier granted vide Reso. No.47-A dated 14.10.86 are given the higher grade pay scale of Rs.1640-60-2600-EB-75-2900 w.e.f. 1.1.86. The initial appointment of J.E (C)/S.O.(Hort.) will continue to be in the pay scale of Rs.1400-40-1800-EB-50-2300.

2. The higher grade of pay scale of Rs.1640-2900 will not be treated as promotional one but will be non-functional and the benefit of F.R. 22(C) now F.R. 22(I) (a) (i) will not be admissible to them as there will be no change in their duties & responsibilities.

3. Further, the J.Es (C) & S.O.(Hort.) on completion of 15 years of total service and having not been promoted to the post of Assistant Engineer (Civil)/Assistant Director (Hort.) in the scale of Rs.2000-60-2300-EB-75-3200-100-3500/- non-availability of such vacancies are allowed further higher of Rs.2000-3500 on personal

basis w.e.f. 1.1.91. As and when regular vacancies in the cadre of Asstt. Engr. (Civil)/Asstt. Dir. (Hort.) will arise, the Jr. Engr. (C)/S.O.(Hort) enjoying the personal promotion will be adjusted against these vacancies, subject to observance of normal procedure.

4. In the matter of pay fixation, the Junior Engr. (C)/Sectional Officer (Hort.) allowed the personal scale, will get the benefit of F.R. 22(i) (a) (i). However, they will continue to perform the same duties/functions of J.Es (C)/S.O. (Hort.).

5. The placement of J.Es(C)/S.O (Hort.) in both the higher scales as mentioned above will be on the basis of fitness and overall performance.

6. All other terms and conditions in the matter of pay fixation will be as admissible under the rules and guidelines issued on the subject by the Govt. of India, Ministry of Urban Development, New Delhi, C.P.W.D.”

8. The writ petition stands disposed in the above terms.

9. *Dasti.*

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

MARCH 05, 2020

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