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

+ W.P.(C) 14377/2022, CM APPL. 43884/2022, CM APPL.43894/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

Through: Mr. Sandeep Prakash Agarwal, Sr.
Adv. with Ms. Namrata Mukim,
Standing Counsel for MCD with Ms.
Garima Jindal, Ms. Tanya Chanda,
Advs.

Mr. Shyam Sunder, Deputy
Commissioner Accounts, HQ. MCD
with Mr. Dheeraj Kumar, AO

versus

DEPUTY LABOUR COMMISSIONER & ORS. Respondents

Through: Mr. Sujoy Gosh, Sr. Adv. with Mr. V.
Sharma, Mr. Mayur Srivastava, Mr.
R. K. Pandit and Mr. Nilanzan Jain,
and Urvi Mohna, Advs.

Mr. Rishikesh Kumar, ASC, GNCTD
with Mr. Aditya Raj, Ms. Sheenu
Priya, Mr. Muhammad Zaid and Mr.
Sudhir Kumar Shukla, Advs. for R-1
to 3.

Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advs. with Mr. Udbhav
Girdharal, (associate) for R-4/ SBI.

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Date of Decision: 14th October, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL. 44647/2022 (for amendment)

Present application has been moved seeking amendment in the prayer clause of the writ petition. Learned counsel for the petitioner submits that in the earlier writ petition, the petitioner inadvertently prayed as follows:

- (a) Issue a writ of certiorari or any other writ of like nature quashing the impugned Recovery Certificate dated 05.11.2021 issued by the office of Deputy Labour Commissioner, District-East/North East, Vishwakarma Nagar, Jhilmil Colony, Shahdara, Delhi-95 vide S.No.F.23(523)/Imp/Lab/E/2021/7813 for a sum of Rs.55,00,000/- plus 8% interest, S.No.F.23(524)/Imp/Lab/E/2021/7816 for a sum of Rs.55,00,000/- plus 8% interest and vide S.No.F.23(524)/Imp/Lab/E/2021/7768 for a sum of Rs.35,75,000/- plus 8% interest
- LCA No.1927/20, 1928/20, 1929/20,1931/20,1932/20,1933/20, 1934/20, 1935/20, 1936/20, 1937/20, 1938/20, 1939/20, 2014/20, 2015/20, 2016/20, 2017/20, 2018/20, 2019/20, 2020/20, 2021/20, 2022/20, 2023/20, 2024/20, 2025/20, 2027/20, 2028/20, 2029/20. 2030/20, 2031/20, 2032/20, 2033/20, 2034/20, 2035/20, 2036/20, 2037/20, 2038/20,2039/20,2040/20, 2041 /20, 2042/20, 2043/20, 2044/20,

2045/20, 2047/20,2048/20, 2065/20, 2066/20, 2067/20, 2068/20, 2069/20, 2070/20, 2071/20, 2072/20 & 2073/20 dated 13.01.2021

- (b) Set-aside the impugned attachment notice No.SDM/VV/2022/1479-87 issued by the Office of the Assistant Collector Grade-II (Vivek Vihar), in the interest of justice, as it is a policy matter.
- (c) May remand the matter back to the Ld.Trial Court to R Reconsider and/or Review the Resolution No.212 dated 13.12.2014 (Annexure A-4) and also circular dated 02.03.2020 (Annexure A-6) passed by the Petitioner, in the interest of justice, as it is policy matter.
- (d) Set up an enquiry against the Union through which the Respondent workmen are claiming –Nagar Nigam Karamchari Sangh Delhi Pradesh, P-2/624, Sultanpuri:
- (e) Pass any other Order/orders which this Hon'ble Court may deem fit and proper in the interest of justice.

Learned senior counsel for the petitioner submits that by way of amendment, the petitioner wants to incorporate the following prayer clauses:

- A. Issue a writ of certiorari or any other writ of like nature quashing the impugned award dated 13.01.2021 in LCA No.1927/20, 1928/20, 1929/20,1931/20,1932/20,1933/20, 1934/20, 1935/20, 1936/20, 1937/20, 1938/20, 1939/20, 2014/20, 2015/20, 2016/20, 2017/20, 2018/20, 2019/20, 2020/20, 2021/20, 2022/20, 2023/20, 2024/20, 2025/20, 2027/20, 2028/20, 2029/20. 2030/20, 2031/20, 2032/20, 2033/20, 2034/20, 2035/20, 2036/20, 2037/20,

2038/20,2039/20,2040/20, 2041 /20, 2042/20, 2043/20, 2044/20, 2045/20, 2047/20,2048/20, 2065/20, 2066/20, 2067/20, 2068/20, 2069/20, 2070/20, 2071/20, 2072/20 & 2073/20;

- B. Issue a writ of certiorari or any other writ of like nature quashing the impugned Recovery Certificates dated 05.11.2021 issued by the Office of the Deputy Labour Commissioner, District-East/North East, Vishwakarma Nagar, Jhilmil Colony, Shahdara, Delhi-95 vide S.No.F.23(523)/Imp/Lab/E/2021/7813 for a sum of Rs.55,00,000/- plus 8% interest, S.No.F.23(524)/Imp/Lab/E/2021/7816 for a sum of Rs.55,00,000/- plus 8% interest and vide S.No.F.23(524)/Imp/Lab/E/2021/7768 for a sum of Rs.35,75,000/- plus 8% interest;
- C. Issue a writ of certiorari or any other writ of like nature quashing the impugned attachment notices No.SDM/VV/2022/1479-87 and also No.SDM/VV/2022/1488-1495 issued by the Office of the Assistant Collector Grade-II (Vivek Vihar) dated 30.03.2022 in the interest of justice;
- D. May remand the matter back to the Ld.Trial Court to R Reconsider and/or Review the Resolution No.212 dated 13.12.2014 (Annexure A-4) and also Circular dated 02.03.2020 (Annexure A-6) passed by the Petitioner, in the interest of justice, as it is policy matter;
- E. Set-up an enquiry against the Union through which the Respondent workmen are claiming-Nagar Nigam Karamchari Sangh Delhi Pradesh, P-2/624, Sultanpuri;
- F. Pass any other Order/orders which this Hon'ble Court may deem fit and proper in the interest of justice.

Learned senior counsel for the respondent has fairly stated that he has no objection and these amendments may be allowed.

In view of the submissions made, the application is allowed. The amended petition be taken on record.

W.P.(C) 14377/2022

1. The present writ petition has been filed challenging the order dated 13th January, 2021. The order dated 13th January, 2021 is based on the statement made by Sh. Ramesh Chandra Sahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32 on oath.
2. The statement of Sh. Ramesh Chandra Sahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32 is reproduced herein under;

“Today, I have filed written statement signed by me in respect of the application of the claimant under Section 33-C (2) of I.D. Act, 1947 and contents of the same may be read as part and parcel of this statement, according to which, the claimant is entitled for the benefit as claimed by him under section 33-C(2) of I.D. Act, 1947. Further, the management shall process the file for the fixation of pay scale by giving the benefits of grade pay and for the calculation of arrear arose due to giving the benefit of MACP with its all consequential benefits. The management shall pay the above said difference of pay scale with arrears along with its other consequential benefits by giving the benefits of MACP with its all consequential benefits as claimed by the claimant as soon as the funds are available. Matter may be disposed of accordingly.”

3. On the basis of the statement of Sh. Ramesh Chandra Sahoo, learned Labour Court passed the impugned order whereby the petitioner-corporation was directed to make the balance payment to the claimants as per statement made on its behalf within one month.
4. In the present writ petition, a very peculiar plea has been raised. Learned senior counsel for the petitioner-corporation states that Sh. Ramesh Chandra Sahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32 has made the statement on oath on 13th January, 2022 before the learned Labour Court, unauthorisedly, without any instruction from the corporation and contrary to the written statement filed by the Corporation in response to the application filed by the respondent-workman under Section 33-C (2) of the Industrial Disputes Act, 1947 (the Act).
5. Learned senior counsel for the petitioner submitted that the department has initiated not only departmental proceedings against said Ramesh Chandra Sahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32, but also has also filed a police compliant against him. Learned senior counsel submits that the matter is under scrutiny at the highest level and the petitioner-corporation is making all efforts to find out the reasons behind making the said false statement.
6. Before proceeding further, this Court is appalled to note that a senior officer of Assistant Commissioner has made a statement without authority or any instruction and contrary to the record. This Court feels that such statements made by a senior officer which is alleged to have been made unauthorizedly and contrary to the record, makes the

functioning of the Court very difficult. The Courts generally records the statements made by the Officer of such corporations on its face value and passes the order on the basis of their statements. If such statements are alleged to have been made unauthorisedly, then it would be very difficult for the Courts to record such statements and act upon the same. The Courts function on the premises of trust and faith. This Court considers that MCD should take appropriate action and evolve a mechanism, so that no such instance is repeated. If the officer is found to be guilty, strict action should be taken.

7. This Court would not make any further observation in this regard as it may affect the departmental proceedings and the investigation and furthermore since the officer is not a party before this Court. It would be suffice to say that this should be inquired into and investigated by the appropriate /competent authority with all seriousness and it must reach to the logical conclusion.
8. Learned senior counsel for the petitioner submits that in fact, these respondent workmen were appointed on daily wages against the leave substitute's posts in the year 1996-1998.
9. It has been submitted that these respondent workmen along with many other daily wagers were regularized in April, 2013. It has further been submitted that the present disputes revolves around the arrears and MACP of pay for the intervening period between 2004-2013.
10. Learned senior counsel submits in fact, the plea taken by the respondents-workmen are that they are entitled to be regularized w.e.f. 2004. Learned senior counsel submits that these workmen could

not have been regularized w.e.f. 2004 as there were no sanctioned post at that time. Reliance has been placed on “***Secretary, State of Karnataka and Others v. Uma Devi (3) and Others***”(2006) 4 SCC 1.

11.Learned senior counsel further relied upon the circular dated 2nd March, 2020 which is regarding claim of arrears of employees regularized in the year March, 2013. Vide this circular, a clarification was issued which is as follows;

A. *All leave substitutes engaged on or before 10/04/1996 against vacant posts of Safai Karmachari's and completed 10 years continuous service as on 10/04/2006 will be considered as regularized as Paryavaran Sahayaks (Safai Karmacharies) w.e.f. 10/4/2006 i.e. the date set by Hon'ble Court. Pay fixation and regularization arrears are payable w.e.f. 10/04/2006 for such employees.*

B. *For those leave substitutes engaged but not against vacant posts and regularized against the posts created in 2013 vide resolution No.293 dated 18/3/2013 are eligible for pay fixation as well as arrears w.e.f. 1/4/2013 or their actual date of regularization whichever is later.”*

12.Learned senior counsel submits that payment of the arrears in terms of the attachment order issued by the learned Labour Court would run into around 600 crores with respect to all the employees and therefore, in view of the judgment of the Supreme Court in “***Secretary, State of Karnataka and Others (supra)***, “***State of Rajasthan & Ors. v. Daya Lal & Ors.***” (2011) 2 SCC 429 and “***Nand Kumar v. State of Bihar & Ors.***” (2014) 5 SCC 300, the matter requires deliberation and the recovery certificate are liable to be stayed immediately.

- 13.Sh. Sujoy Gosh, learned senior counsel for the respondent vehemently opposed the same. Learned senior counsel submits that as per office order of the corporation itself, dated 26th December, 2014, which refers to the Resolution No. 212 dated 13th December, 2014, the creation of 5000 posts of regular were Swachhata Karmachari were created w.e.f. 1st April, 2004. Learned senior counsel submits that in view of this order of the erstwhile East Delhi Municipal Corporation the order of the learned Labour Court is absolutely correct.
- 14.Learned senior counsel has further submitted that on the same analogy, the Safai Karmacharis were regularized in South Municipal Corporation and North Delhi Municipal Corporation w.e.f. 1st April, 2004.
- 15.Learned senior counsel has further submitted that the present respondents-workmen will be seriously prejudiced if they are not regularized, despite a resolution of the corporation w.e.f. 1st April, 2004. Learned senior counsel has also submitted that even EDMC has paid 25% of the arrears w.e.f. 1st April, 2004 to the EDMC employees.
16. As this Court has noted earlier, the present writ petition has raised a very serious issue as to a senior officer having made a statement allegedly unauthorisedly, without any instruction and contrary to the written statements filed by him only before the learned Labour Court. The matter is pending departmental inquiry and is also stated to be subject matter of the investigation to be conducted by the law enforcement agency. The culmination of such inquiry and investigation may take a long time. The staying of the recovery

certificate may cause a serious prejudice to the respondent-workmen. At the same time asking the corporation to make the payment to the respondents-workmen on the basis of the statement allegedly having been made without any authorization and contrary to the record may be a dent on the public exchequer. The refund /recovery of such amount may also be very difficult.

17. In these circumstances, in order to balance the interest of the parties, it would be desirable if the matter is remanded back to the learned Labour Court. Learned Labour Court is directed to decide the application under Section 33-C-(2) of the Industrial Disputes Act dated 10th February, 2020 having been filed by the respondents-workmen on the basis of the written statement filed by the petitioner corporation and independent of the statement made by Sh. Ramesh Chandra Sahoo made on 13th January, 2021.
18. It is pertinent to mention here that this Court has not gone into the merits of the case and nothing expressed or stated herein shall tantamount to be any expression on the merits of the case. Both the parties shall be at liberty to raise all contentions before the learned Labour Court regarding the application under Section 33-C-(2) of the Industrial Disputes Act and its reply.
19. Learned senior counsel very fairly submitted that corporation shall produce the service books of all the respondent-workmen before the learned Labour Court so as to assist the Labour Court in proper adjudication of the application under Section 33-C-(2) of the Industrial Disputes Act.

20. In view of the seriousness of the matter, learned Labour Court is directed to dispose of the matter as expeditiously as possible. However, recovery certificate issued in award No. F23(523)/Imp/Lab/E/2021/7813 dated 5th November, 2021 shall remain in abeyance till the matter is decided *de novo* by the learned Labour Court.

21. With these observations, the present petition along with pending applications stands disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 14, 2022

rb/Pallavi