

\$~37, 38, 40 to 47

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

37

+ W.P.(C) 15979/2022, CM APPL. 49773/2022, CM APPL.
49775/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

DEPUTY LABOUR COMMISSIONER & ORS. Respondents

38

+ W.P.(C) 16055/2022, CM APPL. 50102/2022 CM APPL.
50103/2022, CM APPL. 50104/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

DEPUTY LABOUR COMMISSIONER & ORS. Respondents

40

+ W.P.(C) 16097/2022, CM APPL. 50229/2022, CM APPL.
50230/2022 CM APPL. 50231/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

KRISHAN PAL & ORS. Respondents

41

+ W.P.(C) 16113/2022, CM APPL. 50322/2022, CM APPL.
50323/2022 & CM APPL. 50324/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

SH. MANGE RAM & ORS. Respondents

42

+ W.P.(C) 16115/2022, CM APPL. 50330-50332/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

DEPUTY LABOUR COMMISSIONER & ORS. Respondents

43

+ W.P.(C) 16116/2022, CM APPL. 50359/2022, CM APPL.
50334/2022, CM APPL. 50335/2022

W.P.(C) 15979/2022 and connected matters

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MUNICIPAL CORPORATION OF DELHI Petitioner
versus
SMT. SITA & ORS. Respondents

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+ W.P.(C) 16117/2022, CM APPL. 50336-50338/2022
MUNICIPAL CORPORATION OF DELHI Petitioner
versus
LAXMAN & ORS. Respondent

45
+ W.P.(C) 16118/2022, CM APPL. 50340-50342/2022
MUNICIPAL CORPORATION OF DELHI Petitioner
versus
DEPUTY LABOUR COMMISSIONER & ORS. Respondents

46
+ W.P.(C) 16119/2022, CM APPL. 50346-50348/2022
MUNICIPAL CORPORATION OF DELHI Petitioner
versus
DEPUTY LABOUR COMMISSIONER & ORS. Respondents

47
+ W.P.(C) 16120/2022, CM APPL. 50349-50351/2022
MUNICIPAL CORPORATION OF DELHI Petitioner
versus
SMT MUNNI & ORS. Respondents

Present: Mr.Sandeep Prakash Agarwal, Sr.Adv. with Ms.Garima Jindal,
Adv. for Ms.Namrata Mukim, Standing Counsel for
MCD/petitioner and Ms.Tanya Chanda, Advocate in items
no.37, 38, 40, 41, 42, 43, 44, 45, 46 & 47.
Mr.Sanjoy Ghosh, Sr. Advocate with Mr.V.Sharma,
Mr.R.K.Pandit and Mr.Mayur Srivastava, Advocates for the
respondents in all the matters.
Mr.Anuj Aggarwal, ASC, GNCTD with Ms.Ayushi Bansal,
Mr.Sanyam Suri and Ms.Arshya Singh, Advocates for
respondents no.1, 2 and 3 in items no.37 & 45.

Mr.Divyam Nangdrajog and Mr.Mohd. Shahid Khan,
Advocates for GNCTD in item no.38.
Mr.Naushad Ahmed Khan, Advocate for deputy labour
commissioner in item no.46.

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Date of Decision: 22.11.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. W.P.(C) 15979/2022 has been filed with the following prayers:

A. Issue a writ of certiorari or any other writ of like nature quashing the impugned award dated LCA NO. 773119, 774/19, 775/19, 776/19, 777/19, 778/19, 779/19, 780/19, 781/19, 782/19 dated 19.12.2019 issued by Shri Lokesh Kumar Sharma, Addl. District & Sessions Judge, PO, Labour Court-XIX, Rouse Avenue Courts, New Delhi in the interest of justice;

B. Issue a writ of certiorari or any other writ of like nature quashing the impugned Recovery Certificate 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(305)/Imp/Lab/E/2021/3596 dated 06.08.2021 for a sum of Rs.2,75,066/- plus 8% interest and also quash any Recovery Certificates issued in respect of Respondents 5 (I) to (X) on the basis of the Impugned Award dated 19.12.2019, in the interest of justice;

C. Issue a writ of certiorari or any other writ of like nature quashing the impugned attachment notice No. SDM/VV/2022/406-416 dated 25.01.2022 issued by the Office of the Assistant Collector, Grade-II (Vivek Vihar) and also quash any attachment notice issued in respect of Respondents 5 (I) to

(X) on the basis of the Impugned Award dated 19.12.2019, in the interest of justice;

D. May remand the matter back to the Ld. Trial Court to 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 and may remand back also in view of the judgment passed in WP(C)14377/2022 Municipal Corporation Of Delhi Vs Deputy Labour Commissioner & Ors. dated 14.10.2022, 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;”

2. Other writ petitions being W.P (C) Nos. 16055/2022, W.P.(C) 16097/2022, W.P.(C) 16113/2022, W.P.(C) 16115/2022, W.P.(C) 16116/2022, W.P.(C) 16117/2022, W.P.(C) 16118/2022, W.P.(C) 16119/2022 and W.P.(C) 16120/2022 have also been filed seeking the identical ad-interim prayers.

3. Earlier in W.P.(C) 14377/2022 on 14.10.2022, the following order was passed:

“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 Karamchhari 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 complaint 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.”

4. Thereafter W.P.(C) Nos. 15417/2022, W.P.(C) 15423/2022 & W.P.(C) 15427/2022, W.P.(C) 15492/2022, W.P.(C) 15493/2022 & W.P.(C) 15510/2022, W.P.(C) 15511/2022 & W.P.(C) 15512/2022 have been filed, wherein, on 11.11.2022, the following order was passed:

1. Earlier MCD had filed a writ petition bearing W.P. (C) No. 14377/2022 tiled as “Municipal Corporation of Delhi vs. Deputy Labour Commissioner & Ors” dated 14th October, 2022 in which the following order was passed;

“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 complaint 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.”

2. Present writ petitions have been filed on identical facts.

3. Learned senior counsel for the respondent submits that the only distinction between the cases earlier disposed of and the present cases are that in the earlier order dated 14th October, 2022, the contention of the learned senior counsel for the petitioner was recorded that the respondent –workman along with other daily wagers were regularized in April, 2013.

4. Learned senior counsel for the respondent submits that, however, in the present cases and in particular W.P.(C) 15417/2022, MCD has specifically stated in reply to the claim petition that the claimant was initially appointed as a daily wager by the management and thereafter their services were regularized by the management w.e.f. 1st April, 2003 by EDMC. Learned senior counsel for the respondents submits that therefore, it is a different case. Attention of the Court has been invited to para 4 of the reply to the claim petition, wherein it has been recorded as under:

“4. That the management has to implement the benefits of the pay-band of Rs.5200-20,200+GP1800/- with MACP in the Pay Scale of its employee, and thus same are under process. It is further submitted that, the arrears of the Difference of Salary as mentioned in Annexure-A in the application of the claimant is not correct and the concerned department of the management is being calculated the arrear of Difference of Salary subject to Verification from the Accounts Department of the EDMC and management shall pay the benefits subject to availability of funds. The copy of the relevant pages of the service book of the concerned employee is Annexed herewith as a Annexure-X.”

5. Learned senior counsel for the petitioner has submitted that the submission made by learned senior counsel for the respondent is incorrect and in fact, the writ petition earlier

disposed of vide order dated 14th October, 2022 and the present petitions are on identical facts. Learned senior counsel for the petitioner has also invited the attention of this Court to para 4 of the reply to the claim petition wherein the Corporation has stated that it has to implement the benefits of the pay-band of Rs.5200-20,00+GP1800/- with MACP in the Pay Scale of its employees, and the same are under process.

6. Learned senior counsel for the petitioner has specifically stated that MCD in the reply, which are identical in all the cases, has taken a plea that the arrears of difference of salary as claimed by the claimant are not correct and the correct amount is being calculated by the department. Learned senior counsel submits that the period of entitlement of the claimants are yet to be ascertained by the Corporation. Learned senior counsel has submitted that in fact, the statement made by Mr. Ramesh Chandra Shahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32 that the management shall pay the difference of pay scales with the arrears along with 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, is incorrect and had been made without any instructions and is contrary to record.

7. Learned senior counsel for the petitioner submits that similarly, the learned Labour Court has fallen into an error by accepting the statement of Mr. Ramesh Chandra Shahoo, Assistant Commissioner, Shahdara South Zone, EDMC-32 by making a direction to make the balance payment to the claimant as per the statement made by him.

8. The present proceedings have emanated out of the claim petition filed under Section 33-C (2) of the Industrial Disputes Act, 1947. In a brief compass, the MCD has filed all these writ petitions on the ground that Mr. Ramesh Chandra Shahoo, Assistant Commissioner, Shahdara South Zone, EDMC-110032 has made a statement unauthorizedly and contrary to the record, on the basis of which the learned Labour Court has passed the impugned order.

9. Learned Senior counsel for the petitioner has submitted that until the period of entitlement is ascertained such directions could not have been passed.

10. This Court will restrain itself from making any comments/observations on the rival contentions as posed by both the learned senior counsels regarding the date from which the arrears of salary/pay is to be made. I consider that this is required to be adjudicated in terms of the directions as passed in the earlier writ petition bearing W.P. (C) No. 14377/2022 tiled as “Municipal Corporation of Delhi vs. Deputy Labour Commissioner & Ors” disposed of vide order dated 14th October, 2022.

11. It is pertinent to mention here that this Court has not gone into the merits of the cases and nothing expressed or stated herein shall tantamount to be any expression on the merits of the cases. 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.

12. The 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.

13. Learned Labour Court is directed to dispose of the matters as expeditiously as possible. However, all recovery certificates pertaining to the impugned awards in LCA Nos. 691/19, 692/19, 693/19, 694/19, 695/19, 697/19, 698/19, 699/19, 700/19, 815/19, 816/19, 817/19 & 818/19 in W.P.(C)15417/2022; LCA Nos. 671/19, 804/19, 805/19, 806/19, 807/19, 808/19, 809/19, 810/19, 811/19, 812/19 & 813/19 in W.P.(C)15423/2022; LCA Nos. 277/19, 278/19, 279/19, 280/19, 281/19, 285/19, 286/19, 287/19, 288/19, 289/19, 290/19, 291/19, 295/19, 296/19, 297/19, 298/19, 444/19, 445/19, 446/19, 447/19, 448/19, 449/19, 450/19, 458/19, 459/19, 460/19, 461/19, 462/19, 463/19, 464/19, 465/19, 466/19, 468/19, 469/19 & 470/19 in W.P.(C) 15427/2022; LCA Nos. 339/19, 340/19, 341/19, 342/19, 343/19, 344/19, 345/19, 346/19, 347/19 & 348/19 in W.P.(C) 15492/2022; LCA Nos. 300/19, 301/19, 302/19, 303/19, 304/19, 305/19, 308/19, 309/19, 313/19 & 319/19 in W.P.(C) 15493/2022; LCA Nos. 783/19, 784/19,

785/19, 786/19, 787/19, 788/19, 789/19, 790/19, 791/19 & 792/19 in W.P.(C) 15510/2022; LCA Nos. 642/19, 643/19, 644/19, 645/19, 646/19, 647/19, 648/19, 649/19, 794/19, 795/19, 796/19, 797/19 & 798/19 in W.P.(C) 15511/2022; LCA Nos. 837/19, 838/19, 839/19, 840/19, 841/19, 842/19, 843/19, 844/19, 845/19, 847/19, 848/19, 849/19, 850/19, 851/19, 852/19, 854/19, 855/19 & 856/19 in W.P.(C) 15512/2022 shall remain in abeyance till the matter is decided de novo by the learned Labour Court.

14. Let litigation expenses to the tune of Rs.5,000/- be paid to each respondent-workman in these petitions by the petitioner.

15. With these observations, the present petitions along with all pending applications stand disposed of.”

5. The present petitions also involve identical issue(s). Hence, this Court will restrain itself from making any comments/observations on the rival contentions as posed by both the learned senior counsels regarding the date from which the arrears of salary/pay is to be made. I consider that this is required to be adjudicated in terms of the directions as passed in the earlier writ petition bearing W.P. (C) No. 14377/2022 tiled as “Municipal Corporation of Delhi vs. Deputy Labour Commissioner & Ors” disposed of vide order dated 14th October, 2022.

6. Both the learned senior counsels for the parties submit that issue involved in the writ petitions are identical in nature and therefore, without going into the merits of the case, the following directions are passed:

(i) 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 in Sh. Ramesh Chandra Sahoo in W.P.(C) 15979/2022 (item 37), W.P.(C) 16055/2022 (item 38), W.P.(C) 16115/2022 (item 42), W.P.(C) 16117/2022 (item 44) and W.P.(C) 16119/2022 (item 46), statement made by Sh.Sharad Chandan in W.P.(C) 16097/2022 (item 40), W.P.(C) 16113/2022 (item 41) & W.P.(C) 16118/2022 (item 45) and statement made by Mr.Kishan Swaroop in W.P.(C) 16116/2022 (item 43) and W.P.(C) 16120/2022 (item 47).

(ii) 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.

(iii) 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.

(iv) In view of the seriousness of the matter, learned Labour Court is directed to dispose of the matter as expeditiously as possible. However, all recovery certificates pertaining to the impugned awards in LCA Nos.773/19, 774/19, 775/19, 776/19, 777/19, 778/19, 779/19, 780/19, 781/19 & 782/19 in WP (C) 15979/2022; LCA Nos. 653/19, 654/19 & 752/19 in WP (C) 16055/2022; LCA Nos.1977/19, 1978/19, 1979/19, 1980/19, 1981/19, 1982/19, 1983/19, 1984/19, 1985/19, 1986/19, 1987/19, 1988/19, 1989/19, 1990/19, 1991/19, 1992/19, 1993/19, 1994/19, 1996/19, 2194/19, 2195/19,

2196/19, 2197/19, 2198/19, 2199/19, 2200/19, 2201/19, 2202/19, 2203/19, 2233/19, 2295/19, 2298/19, 2299/19, 2300/19, 2301/19, 2302/19, 2303/19, 2304/19, 2305/19, 2306/19, 2307/19, 2308/19, 2309/19, 2310/19, 2311/19, 2312/19, 2313/19, 2315/19, 2316/19, 2317/19, 2318/19, 2319/19, 2321/19, 2323/19, 2324/19, 2325/19, 2326/19, 2327/19, 2328/19, 2329/19, 2330/19, 2331/19, 2332/19, 2333/19, 2334/19, 2573/19, 838/20, 839/20, 840/20, 841/20, 842/20, 843/20, 844/20, 845/20 & 847/20 in WP (C) 16097/2022; LCA Nos. 1422/20, 1658/20, 1659/20, 1660/20, 1661/20, 1662/20, 1663/20, 1664/20, 1665/20, 1666/20, 1667/20, 1668/20, 1669/20, 1670/20, 1672/20, 1673/20, 1674/20, 1675/20, 1676/20, 1677/20, 1678/20, 1679/20, 1680/20, 1681/20, 1682/20, 1683/20, 1684/20, 1685/20, 1686/20, 1687/20, 1688/20, 1689/20, 1690/20, 1691/20, 1692/20, 1693/20, 1694/20, 1695/20, 1696/20, 1697/20, 1699/20, 1808/20, 1809/20, 1810/20, 1811/20, 1812/20, 1813/20, 1814/20, 1815/20, 1816/20, 1817/20, 1818/20, 1819/20, 1820/20, 1821/20, 1822/20 & 1824/20 in WP (C) 16113/2022; LCA Nos. 631/19 to 640/19 & 799/19 to 803/19 in WP (C) 16115/2022 ; LCA Nos.1109/19 to 1138/19 in WP (C) 16116/2022; LCA Nos. 701/19, 702/19, 703/19, 704/19, 705/19, 706/19, 707/19, 708/19, 710/19, 819/19, 820/19, 821/19, 822/19 & 823/19 in WP (C) 16117/2022; LCA Nos. 1452/20, 1453/20, 1454/20, 1456/20, 1459/20, 1460/20, 1461/20, 1462/20, 1463/20, 1464/20, 1465/20, 1467/20, 1488/20, 1489/20, 1490/20, 1491/20, 1559/20, 1560/20, 1561/20, 1562/20, 1564/20, 1565/20, 1566/20, 1567/20, 1568/20, 1570/20, 1572/20, 1573/20, 1575/20, 1576/20, 1577/20, 1578/20, 1579/20, 1580/20, 1581/20, 1582/20, 1583/20, 1584/20, 1585/20, 1586/20, 1587/20, 1588/20, 1589/20, 1590/20, 1591/20, 1592/20, 1593/20, 1595/20, 1596/20, 1597/20, 1598/20, 1599/20, 1600/20, 1601/20, 1602/20, 1603/20, 1604/20, 1605/20, 1606/20, 1607/20,

1608/20 & 1609/20 in WP (C) 16118/2022; LCA Nos. 380/19, 381/19, 382/19, 383/19, 384/19 & 386/19 in WP (C) 16119/2022; LCA Nos. 511/19 to 520/19 & 763/19 to 767/19 in WP (C) 16120/2022 shall remain in abeyance till the matter is decided *de novo* by the learned Labour Court.

7. On the basis of parity, the litigation expenses in the sum of Rs.5,000/- is awarded to each workman. Litigation expenses be paid to the respondents/workmen within eight weeks. However, it is clarified that the respondent-workman shall not claim the litigation expenses before the labour court qua these proceedings.

8. With these observations, the present writ petitions along with all the pending applications stand disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 22, 2022

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