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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 10.02.2023

+ W.P.(C) 3978/2016

+ W.P.(C) 11994/2016

+ W.P.(C) 5303/2017

+ W.P.(C) 819/2018 & CM APPL. 3495/2018

SOUTH DELHI MUNICIPAL CORPORATION..... Petitioner

Through: Ms. Arunima Dwivedi, ASC , MCD
with Ms. Swati Jhunhunwala, Ms. Pinky Pawar,
Mr. Aakash Pathak, Advs.

versus

DY. LABOUR COMMISSIONER (DISTRICT SOUTH) AND ANR

..... Respondent

Through: Mr. Vanshay Kaul, Adv. for Mr.
Sameer Vashisht, ASC (Civil), GNCTD.
Ms. Meghna De, Ms. L. Gangmei and Mr. Sachin
Sharma, Advs. for R-2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present decision disposes of four writ petitions all assailing similar recovery certificates issued by Deputy Labour Commissioner under section 33(C)(1) of the Industrial Disputes Act, 1947 (the Act). Since all the recovery certificates relate to the same award dated 13.05.1988, passed by the learned Industrial Tribunal as also the fact that identical grounds have been raised in all the petitions, the same are being decided by this common order. However, for the sake of convenience, the facts of W.P.(C) 3978/2016 are being referred to

hereinafter.

2. The present petition seeks to assail the recovery certificate dated 31.12.2015, issued by Deputy Labour Commissioner under section 33(C)(1) of the Act vide which the petitioner has been directed to pay a sum of Rs.1,75,071/- to the respondent no.2 towards her differential wages for the period between 31.07.2013 to 31.07.2015.
3. Since the impugned recovery certificate was a non-speaking order, this Court, vide its order dated 06.04.2017, granted liberty to the petitioner to submit a representation to the learned Deputy Labour Commissioner with a direction to the learned Commissioner to pass a reasoned order after considering the submissions of the parties. Pursuant thereto, the learned commissioner has passed an order dated 06.04.2017 reiterating that the sum of Rs.1,75,071/- as per the recovery certificate issued on 31.12.2015, was payable by the petitioner.
4. In support of the petition, learned counsel for the petitioner vehemently submits that the order dated 06.04.2017 incorrectly records that the respondent workman, while working as a ANM/B Grade Nurse, had in fact worked for more than 10 years against the post of an “A” grade staff nurse, which was evident from the fact that the management itself had paid the differential wages to her till 30.06.2013. She submits that the factual position is otherwise, as the petitioner has now records to show that the respondent never worked on the post of a grade ‘A’ nurse and therefore, prays that the impugned recovery certificate be set aside.
5. On the other hand, Ms. Meghna De, learned counsel for the

respondent supports the impugned certificate and submits that the award having been passed way back on 13.05.1988, the respondent has already been deprived of her rightful claim for the last many years despite the repeated findings of the learned Deputy Labour Commissioner that she was entitled to receive the pay of grade 'A' nurse. She submits that as per the award, all the B- Grade Staff Nurses and Auxiliary Nurse, Midwives who had completed three years' service and were posted against the post of 'A' Grade Staff Nurses would be entitled to the pay of A-Grade Staff Nurses for the period during which they worked against the post of 'A' Grade Staff Nurse. She, therefore, contends that once it has been found that the respondent no. 2 was working against the post of 'A' grade staff nurse, she was entitled to receive the salary of the said post. She, thus, prays that the Writ Petition be dismissed.

6. In order to appreciate rival submissions of the parties, it would be appropriate to refer *in extenso* the order dated 06.04.2017, passed by the learned Deputy Labour Commissioner, wherein he has dealt in detail with the rival submissions of the parties. The same reads as under:

"In compliance of the order of the Hon'ble High Court of Delhi in CWP No. 3978/16 dated 06/01/2017 in the matter referred above (SDMC V/s Dy. Labour Commissioner & Ors.). The Management/SDMC Health Department Office of the Additional DHA E - Block 18th Floor, Dr. SPM Civic Centre, JLN Marg, New Delhi - 110002 filed their representation Vide no. AO (H)/HQ/M&TB/SDMC/2017/1984 dated 08/03/2017 before the DLC/Authority (South) to revoke the recovery certificate issued on 31/12/2015.

The Management has submitted in their representation that in order to implement the Award dated 13.05.1988, MCD has issued an Office Order bearing No. AO (H)/GF-25/2012/2 dated 03.05.2012 was issued to all MSs & All Addl. DHA which is annexed herewith as Annexure 'B' in their representation. Further the management also stated that Nodal officers/NDMC has also issued a letter bearing No.- AO (H)/NDMC/2013/460 dated 23/07/2013 to MS/GLM Hospital, RMS/Ay. Hosp. Haiderpur Th. Addl. Dir. (Ay.)/NDMC, RMS/Tilak Nagar Colony Hospital Thro. Addl. DHA (M)/SDMC, RMS/Kalkajl Colony Hospital Thro. Addl. DHA (M)/SDMC, GF to verify whether any ANM/'B' Grade Nurse has worked at the post of 'A' Grade Staff Nurse in GLM Hospital (Related Health Centre). The management has also annexed letter dated 05/08/2013 of GLMH, which is the reply filed by ANS in response to circular dated 23/07/2013, wherein it Is stated that all the employees mentioned in the list from serial no. 1 to 6 has worked at the post of ANMs/'B' Grade Staff Nurse as per the attendance record available in the office Annexure 'C' (Colly) The Letter dated 05.08.2013 Is annexed herewith as Annexure 'E' in your representation. Again the management has issued a circular Vide PA (DHA) 2014/242 dated 04.06.2014 to all Health Departments to verify whether any ANM has worked at post of W Grade Staff Nurse which Is annexed herewith as Annexure 'D' in your representation.

The applicant/workman has submitted that although she worked as ANM/B Grade Nurse but she worked against the post of W grade staff nurse In the medical Institutions for more than 10 years, therefore, as per award dated 13/05/1988, she Is entitled to be promoted as W grade Staff Nurse and also entitled for difference of wages between ANM/'B' grade Nurse and 'A' grade staff nurse. She further submitted that the management has already paid difference of wages till 30/06/2013 to her and present

application is for recovery of subsequent period i.e. from 01/07/2013 to 31/07/2015.

On perusal of the proceedings and the records placed on file It Is found that the applicant workman has worked with the management for more than 10 years as ANM/'B' grade nurse and the management after receiving the award dated 13/05/1988 has Issued a circular no. 3267 dated 04/04/1996, asking all the heads of Municipal Institutions, 'are therefore, requested to make the payment in all such cases as discussed In the meeting held In the chamber of M.H.O on 24/01/1996 to avoid unnecessary legal implications, it may also be taken care of that to avoid double payment, payment be made through payees Account Cheque In the name of the concerned employee and be deposited with the Labour Court/DX.O./Labour Commissioner's office as the case may be and for future the salary of each ANM/B. Grade Staff Nurse be fixed in the scale of 'A' Grade Staff Nurse since when she Is declared entitled to It by the Industrial Tribunal/Labour Court.

Further the applicant/workman after receiving of award dated 13/05/1988 In their favour made a representation to the management to promote ANM/B Grade Nurse to the post of W Grade Staff Nurse and In response to the representation of the workmen, the management Issued circular dated 23/07/2013 to all Add. DHA (M)/SDMC, RMS/Kalkaji Colony Hospital Thro. Addl. DHA (M)/SDMC, requesting them to verify whether above mentioned ANM/B Grade Staff Nurses have worked as W Grade Staff Nurse in the period mentioned In the circular. Since the management did not comply with the award dated 13/05/1988 the claimant/workmen filed claim before Labour Department U/s 33 (C)(1) of I.D. Act, 1947 for the recovery of difference of wages between ANM/B Grade Staff Nurses and W Grade Staff Nurse. After hearing the parties the Labour Department issued Recovery Certificate

for the period upto 30/06/2013 and In accordance with the award dated 13/05/1988 the recovery was issued, and the management has made the payment without objections.

Further, the management has not till date decided the representation of the workman/claimant for her promotion to the post of A Grade Staff Nurse, in response of which the management has issued circular dated 23/07/2013. In view of the facts and circumstances explained above it is not appropriate to dispute the rights of the workman after span of 28 years and even when the management had been providing them the benefit as enumerated in the award dated 13/05/1988. The Recovery Certificate dated 03/12/2015 in favour of Smt. Sharda Rani, sum of Rs.1,75,071/- has been rightly Issued by this authority.”

7. From the perusal of the aforesaid order, it is evident that the learned Deputy Labour Commissioner has accepted the respondent's plea that she had worked against the post of an “A” grade staff nurse and had also been paid the differential wages till 30.06.2013. The learned Deputy Labour Commissioner also observed that the management had failed to give any justification as to why she was, without any objection, paid the differential salary till 30.06.2013 and therefore came to the conclusion that it would not be appropriate to deprive her of these benefits after 28 years from the date of the passing of the award.
8. In the light of these categorical findings of the learned Deputy Labour Commissioner, I am inclined to agree with the respondent that the petitioner cannot now, at this belated stage, be permitted to urge that the respondent was wrongly paid her differential wages for the period till 30.06.2013, and therefore, should not be paid any amount for the

period 31.07.2013 to 31.07.2015 as has been directed vide the impugned recovery certificate. Even otherwise, the finding that the respondent had worked against the post of grade 'A' nurse, is a question of fact, which cannot be said to be perverse in any manner warranting exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India and that too at this belated stage, when the award in furtherance whereof the impugned recovery certificate was issued, was passed way back in 1988.

9. In this regard, reference may be made to the decision in ***“Harjinder Singh v. Punjab State Warehousing Corporation”, (2010) 3 SCC 192*** wherein the Supreme Court has, by referring to its earlier decision in ***Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675***, reiterated the scope of interference by a writ Court while dealing with an award passed by a Labour Court. The relevant observations of the Apex Court read as under:

“13. In Surya Dev Rai case [(2003) 6 SCC 675], a two-Judge Bench, after threadbare analysis of Article 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions : (SCC pp. 694-96, para 38)

“(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Article 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be

subject to certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction—by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction—by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has

chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot

substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

10. In the light of the aforesaid, I do not find any reason, whatsoever, to interfere with the impugned recovery certificates. The writ petitions, being meritless are, accordingly, dismissed.

11. As the petitioner has on 07.12.2017, already deposited the amounts under the impugned recovery certificates in W.P.(C) 3978/2016 and W.P.(C) 11994/2016, the Registry is directed to release the same in favour of the workmen, with accrued interest thereon. In so far as W.P.(C) 5303/2017 and W.P.(C) 819/2018 are concerned, it will be open for the respondents to seek enforcement of the impugned recovery certificates as per law.

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REKHA PALLI, J

FEBRUARY 10, 2023

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