



2024:DHC:4934



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

% **Reserved on : 15th May, 2024**
Pronounced on: 4th July, 2024

+ W.P.(C) 2990/2017 & CM APPL. 13095/2017
EAST DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr.Kumar Rajesh Singh, Advocate

versus

SIROMAN SINGH Respondent
Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 10674/2021 & CM APPL. 32911/2021
NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SH. RAJBIR SINGH & ANR. Respondents
Through: Ms.Aakanksha Kaul and Mr.Satya
Sabharwal, Advocates for UOI

+ W.P.(C) 14028/2021 & CM APPL. 44258/2021
EAST DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr.Kumar Rajesh Singh, Advocate

versus

ANAND PAL Respondent
Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 6044/2017

W.P.(C) 2990/2017 & 32 other connected matters

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SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Rajan Tyagi, Ms.Vijeta
Mukherjee, Mr.P.R. Wadhwa and
Mr.Samar Partap Singh, Advocates

versus

ASHOK KUMAR & ANR Respondents

Through: Ms.Urvi Mohan, Advocate for
GNCTD

+ W.P.(C) 8891/2019 & CM APPL. 36675/2019, CM APPL.
1039/2020, CM APPL. 8516/2020, CM APPL. 14789/2020, CM
APPL. 1068/2022

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal and Mr.Sanjay
Singh, Advocates

versus

DHEER SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 6104/2017 & CM APPL. 25322/2017 & CM APPL.
25325/2017

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Rajan Tyagi, Ms.Vijeta
Mukherjee, Mr.P.R. Wadhwa and
Mr.Samar Partap Singh, Advocates

versus

RAM KISHAN & ANR Respondents

Through: Mr.__, Advocate (Appearance not
given)

W.P.(C) 2990/2017 & 32 other connected matters

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+ W.P.(C) 8986/2017 & CM APPL. 36774/2017
NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

DHARAMVIR SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 13547/2018 & CM APPL. 52775/2018
NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

BALAK RAM Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 13609/2018
SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal and Mr.Sanjay
Singh, Advocates

versus

ZILE SINGH & ANR. Respondents

Through: Mr.__, Advocate (Appearance not
given)



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+ W.P.(C) 13610/2018

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal and Mr.Sanjay
Singh, Advocates

versus

SATPAL

..... Respondent

Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 4413/2019

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal and Mr.Sanjay
Singh, Advocates

versus

SATISH KUMAR & ANR

..... Respondents

Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 4967/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SHRI DHARM PAL AND ORS.

..... Respondents

Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 6992/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing

W.P.(C) 2990/2017 & 32 other connected matters

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Counsel for MCD

versus

SUKHPAL

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 7973/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing Counsel for MCD

versus

SOHAN PAL

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 8672/2019 & CM APPL. 35814/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing Counsel for MCD

versus

SH. JAIVINDER SINGH

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 8990/2017 & CM APPL. 25955/2018

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing

W.P.(C) 2990/2017 & 32 other connected matters

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Counsel for MCD

versus

SUSHEEL KUMAR

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 9180/2017 & CM APPL. 40448/2017 & CM APPL. 918/2018

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing Counsel for MCD

versus

KRIPAL SINGH

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 9837/2017 & CM APPL. 40040/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing Counsel for MCD

versus

ASHOK KUMAR

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 6791/2018

NORTH DELHI MUNICIPAL CORPORATION Petitioner

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Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SHRI RAJ SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 8359/2018 & CM APPL. 3089/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

LATE SHRI CHUNNI LAL Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 9225/2018

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

HARI LAL Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 11589/2017

EAST DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Kumar Rajesh Singh, Advocate

W.P.(C) 2990/2017 & 32 other connected matters

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versus

SH. NABAB SINGH

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 8471/2018 & CM APPL. 32551/2018

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Rajan Tyagi, Ms.Vijeta Mukherjee, Mr.P.R. Wadhwa and Mr.Samar Partap Singh, Advocates

versus

NETAR PAL AND ANR.

..... Respondents

Through: Mr.Vikas Chadha, Mr.Rahul Saini, Mr.Amit Bhati, Ms.Devanjali Chadha & Mr.Anil Kumar, Advocates for R-1

+ W.P.(C) 1330/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Pooja Chandra, Mr.Sumeet Kaul and Ms.Jyoti Khurana, Advocates

versus

JAI PAL SINGH

..... Respondent

Through: Mr.____, Advocate (Appearance not given)

+ W.P.(C) 8716/2019 & CM APPL. 36041/2019

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SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal and Mr.Sanjay
Singh, Advocates

versus

SHRI AJEET SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 10020/2019

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal, Mr.Sanjay Singh
and Mr.Varun Gupta, Advocates

versus

NIRANJAN SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 10021/2019

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal, Mr.Sanjay Singh
and Mr.Varun Gupta, Advocates

versus

MOHAN LAL Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 11911/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

W.P.(C) 2990/2017 & 32 other connected matters

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2024:DHC:4934



Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SHRI DHARAMVIR SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 11915/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SHRI GAJ RAJ SINGH Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 1989/2020 & CM APPL. 6948/2020 & CM APPL.
18798/2020

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

SH. KHEM CHAND Respondent

Through: Mr.__, Advocate (Appearance not
given)

+ W.P.(C) 5455/2020

NORTH DELHI MUNICIPAL CORPORATION Petitioner

W.P.(C) 2990/2017 & 32 other connected matters

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2024:DHC:4934



Through: Ms.Namrata Mukim, Standing
Counsel for MCD

versus

MUNISH CHAND AND RAMESH CHAND Respondent

Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 8138/2020

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal, Mr.Sanjay Singh
and Mr.Varun Gupta, Advocates

versus

RAJENDER SINGH Respondent

Through: Mr.____, Advocate (Appearance not
given)

+ W.P.(C) 9221/2020 & CM APPL. 29749/2020

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr.Arun Birbal, Mr.Sanjay Singh
and Mr.Varun Gupta, Advocates

versus

PREM SINGH Respondent

Through: Mr.____, Advocate (Appearance not
given)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

W.P.(C) 2990/2017 & 32 other connected matters

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J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present batch of petitions under Article 226 of the Constitution of India is arising out of various awards of the learned Industrial Tribunal, wherein, the claims of the respondent workmen in the respective petitions were decided in their favour and against the petitioner, i.e., East Delhi Municipal Corporation of Delhi, North Municipal Corporation of Delhi and South Municipal Corporation of Delhi (now merged and called as Municipal Corporation of Delhi) (hereinafter “MCD”). In all the petitions, a separate award has been passed by the learned Industrial Tribunal holding the workman/claimant who initially joined at the post of ‘*Mali*’ entitled to the pay scale meant for the post of ‘*Garden Chaudary*’ for the period the concerned workman worked as a Garden Chaudhary. For reference, a table has been drawn herein below which states the particulars of respective petitions:

S No.	W.P No.	Relief
1.	1330/2019	<i>In view of the discussions made herein above, it is held that the workman herein, Shri Jaipal Singh is entitled to the pay scale of Garden Chaudhary with effect from 01.04.1989 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947 for publication.</i>
2.	1989/2020	<i>In view of the discussions made herein above, It is held that Shri Khem Chand, the workman herein. Is entitled to the pay scale of Garden Chaudhary with effect from 18.08.1993 till 27.07,2009, the date workman was promoted as Garden</i>



		<i>Chaudhary and as a corollary, management is liable pay the difference of wages of mail vis-à-vis garden Chaudhary From the date when the workman herein was performing duties and functions of garden Chaudhary till the date he was promotes as garden Chaudhary, i.e 18.08.1993 till 27.07.2009. An award is accordingly passes. Let this award be sent to the appropriate government, as required under section 17 of the industrial Disputes Act, 1947, for publication.</i>
3.	2990/2017	<i>In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.950-1500/- (revised from time to time) meant for Garden Chaudhary w.e.f. 01.04.1991 till date. Issue no.2 of the reference is decided accordingly in favour of the Workman. Award is passed accordingly, in these terms.</i>
4.	4413/2019	<i>As a sequel to my above discussion, it is held that Shri Satish Kumar and Shri Radhey Shyam Sharma, the claimants herein, are entitled to the pay scale of Garden Chaudhary with effect from 15.01.2000 and 01.07.1996 respectively and as a corollary, management is liable pay the difference of wages of mali vis a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till 04.03.2014. Further the claimants are also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e. the date when their juniors were promoted as regular Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
5.	4967/2019	<i>As a sequel to my above discussion, it is held that Shri Dharam Pal, Shri Anand, Shri Mahender Singh and Shri Manoj Kumar, the claimants herein, are entitled to the pay scale of Garden Chaudhary with effect from 01.01.1994, 01.01.1999, 01.01.2000 and 18.01.2000 respectively and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary, The claimer's are also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e the date when his juniors were promoted as regular Garden Chaudhary. Further, case of the claimants Shri Balak Ram and Shri Jasbir Singh have already been granted relief vide separate awards, filed by them separately. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>



6.	5455/2020	<i>As a sequel to my above discussion, it is held that Shri Munesh Chand and Shri Ramesh Chand, the claimants herein, are entitled to the pay scale of Garden Chaudhary with effect from 01.09.2001 and 21.05.2002 respectively and as a corollary, management is liable pay the difference of wages of mali vis-à-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. The claimants are also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e. the date when his juniors were promoted as regular Garden Chaudhary. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
7.	6044/2017	<i>As a sequel to my discussion made hereinabove. It is held that the Workman Shri Ashok Kumar was doing the work of garden supervisor since 17.07.1998 and from that date he is entitled to the wages of garden Chaudhary and is corollary, management's liable pay the difference of wages of Mali vis-a-vis garden Chaudhary from the date when the Workman herein was performing duties and functions of garden Chaudhary. And award is accordingly passed. Let this award be sent to the appropriate government, as required under section 17 of the Industrial Disputes Act 1947, for publication.</i>
8.	6104/2017	<i>In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.3050-4590/- (revised from time to time) for Garden Chaudhary w.e.f. 01.01.2001 with all consequential benefits till he looked after the work of Chaudhary with the Management. Issue no.4 of the reference is decided accordingly in favour of the Workman.</i>
9.	6791/2018	<i>Since the claimant is officiating on the post of Garden Chaudhary since 01.01.1997, as such, he is entitled to the pay scale of Garden Chaudhary with effect from 01.01.1997. As a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
10.	6992/2019	<i>In view of this, the reference is partly allowed in favour of the workman. Workman is entitled to get pay-scale & other consequent benefits for the post of Garden Chaudhary w.e.f. 09/06/15 management is directed to grant pay-scale of</i>



		<i>Garden Chaudhary to workman from 09/06/15. Award is passed accordingly.</i>
11.	7973/2019	<i>Thus, it is held that workman is entitled to the difference of wages of the posts of Garden Chaudhary and Mali for the period w.e.f. 01.06.1993 till 27.11.2008. Issue no. 4 as per terms of reference is decided accordingly. Award is passed in these terms and reference is answered accordingly.</i>
12.	8138/2020	<i>Thus, it is held that the workman is entitled to the difference of wages of the posts of Garden Chaudhary and Mali for the period w.e.f. 01.02.1999 till 28.11.2008. Issue Nos.3 and 4 are decided accordingly.</i>
13.	8359/2018	<i>As a sequel to my above discussion, it is held that Shri Chunni Lai, the claimant herein is entitled to the pay scale of Garden Chaudhary with effect from 02.02.1999 and as a corollary management is liable to pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till 02.05.2016, i.e. the date of his death further the claimant is also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014 i.e. the date when his juniors were promoted as regular Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Dispute Act, 1947, for publication.</i>
14.	8471/2018	<i>In view of the discussions made herein above, it is held that the workman is entitled to the pay scale of Garden Chaudhary with effect from 16.07.1997 and as a corollary, management is liable to pay the difference of wages of mali vis-à-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
15.	8672/2019	<i>In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.3050-4590/- (revised from time to time) meant for Garden Chaudhary w.e.f. 01.01.1997 till the date, he worked as Chaudhary, Issue no.5 of the reference is decided accordingly in favour of the Workman.</i>
16	8716/2019	<i>The copy of sponsorship is annexed as Annexure-G with the statement of claim as the workman is the member of MCD General Mazdoor Union (Regd. & Recognized) and copy of the Registration is annexed as Annexure- H, Copy of the letter to negotiate with the management is annexed as Annexure -I and copy of the list of Office bearers is annexed as Annexure-</i>



		<i>J. In view of the above, this Hon'ble Tribunal may kindly allow the salary of Garden Chaudhary as the workman has been performing their duty in the pay scale of Rs. 3050-4590 w.e.f 16.6.1997 alongwith all consequential benefits.</i>
17.	8891/2019	<i>It is therefore held that Shri Dheer Singh, the claimant herein, is entitled to the pay scale and all allowances except increment with effect from 01.01.1991 to December 2001, i.e. difference in the pay scale of mali and Garden Chaudhary and with effect from 17.10.2008, i.e. difference in the pay scale of mali and Section Officer, as per policy of 'Equal Pay for Equal Work'. Further, Shri Dheer Singh is entitled for regularization in the pay scale of Section Officer in regularized category with effect from 17.10.2008 onwards with all consequential benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
18.	8986/2017	<i>In view of the discussions made herein above, it is held that the workman is entitled to the pay scale of Garden Chaudhary with effect from January 1990 and as a corollary, management is liable to pay the difference of ages of mali vis-à-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till date. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
19.	14028/2021	<i>In view of the discussions made herein above, it is held that Shri Anand Pal, the workman herein, is entitled to the pay scale of Garden Chaudhary with effect from April 1999 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary, i.e. 01.04.1999, till date.. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under section 17 of the Industrial Disputes Act, 1947, for publication.</i>
20.	13610/2018	<i>In view of the discussions made herein above, It is held that the workman herein, Shri Satpal is entitled to the pay scale of Garden Chaudhary with effect from 01.08.1993 and as a corollary, management is liable pay the difference of wages of mall vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required</i>



		<i>under Section 17 of the Industrial Dispute act, 1947, for publication.</i>
21.	13609/2018	<i>In view of the discussions made herein above, it is held that the workman. Shri Zile Singh is entitled to the pay scale of Garden Chaudhary with from 01.11.1999 and as a corollary, management is liable pay this difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhari. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act 1947 for publication.</i>
22.	13547/2018	<i>In view of the ratio of law discussed hereinabove, it is held that the workman herein, Shri Balak Ram is entitled to the pay scale of Garden Chaudhary with effect from 01.01.2006 and as a corollary, management is liable to grant promotion of Garden Chaudhary in the pay scale of Rs.5200-20200 from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947.</i>
23.	11915/2019	<i>Thus, it is held that workman is entitled to the difference of wages of the posts of Garden Choudhary and Mali for the period w.e.f. 01.01.2001 till 28.11.2008. Issue no.2 is decided accordingly.</i>
24.	11911/2019	<i>As a sequel to my above discussion, it is held that Shri Dharamvir Singh, the claimant herein, is entitled to the pay scale of Garden Chaudhary ' with effect from 01.03.2003 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. Further the claimant is also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e the date when his juniors were promoted as regular Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947.</i>
25.	11589/2017	<i>Perusal of evidence makes it crystal clear that evidence of workman is reliable, credible and required evidence in this case. While evidence of management not at all sufficient to rebut the evidence of workman. So this Tribunal has no option except to decide the reference in favour of workman and against management. Which is accordingly decided. And claim statement is allowed. Management is directed to grant</i>



		<i>salary of Garden Chaudhary to workman Sh. Nabab Singh since 01.01 .2001 along with all consequential benefits. Compliance has to be done by management within 2 months after expiry of period of available remedy against the instant Award.</i>
26.	10674/2021	<i>This Court is of the view that when it has been proved on record by workman through documents that he has worked as Chaudhary since from 1.1.1994, his claim for the wages to the said post of Chaudhary cannot be rejected. The respondent is directed to examine the case of the claimant in the pay scale of Chaudhary as on 1.1.1994 and awarding the amount of arrears within a period of 6 (six) months.</i>
27.	10021/2019	<i>The reference be and the same is answered in favour of the workman and it is directed that the workman is entitled to the pay scale of Garden Chaudhary i.e. Rs 3050- 4590, revised from time to time w.e.f. 12.02.1999 alongwith all consequential benefits. The management is thus directed to revise the current pay of the workman accordingly and pay the arrear to him accruing between 12.02.1999 to 04.03.2014 when he was promoted as Garden Chaudhary within 3 months from the date when this award would.</i>
28.	10020/2019	<i>herein, Shn Niranjn Singh is entitled to the pay scale of Garden Chaudhary with effect from 01.01.2001 and as a corollary, management is liable pay the difference of wages of mail vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary, i.e. from 01.01.2001 till 03.03.2014 and is entitled to be promoted as Garden Chaudhary under the quota with effect from 04.03.2014, the date when juniors to the claimant was promoted in the said category. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.</i>
29.	9837/2017	<i>As a sequel to my above discussion, it is held that the Shri Ashok Kumar, the claimant herein, it is held that the workman Shri Ashok Kumar was doing the work of Garden Supervisor since 01.06.2002 and from that date he is entitled to ' the wages of Garden Chaudhary and as a corollary, management is liable pay the difference of wages of mall vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary and he be promoted as Garden Chaudhary under promotional quote with effect from 04.03.20** date his juniors were promoted in the said category. An award is accordingly passed. Let this award be sent to the appropriate Government, as required</i>



		<i>under Section 17 of the Industrial Disputes Act 1947.</i>
30.	9225/2018	<i>Since the workman was officiating on the post of Garden Chaudhary since 01.04.1989, as such, he is entitled to the pay scale of Garden Chaudhary with effect from 01.04.1989. As a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary, i.e. from 01.04.1989 till the date of his retirement on 30.06.2014. An award is, accordingly, passed.</i>
31.	9221/2020	<i>In view of the discussions made herein above, it is held that the workman herein, Shri Prem Singh is entitled to the pay scale of Garden Chaudhary with effect from 03.09.2014 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till the date he was promoted as Garden Chaudhary, i.e. from 16.11.1999 to 03.09.2014, An award is accordingly passed.</i>
32.	9180/2017	<i>In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.3050-4590/- (revised from time to time) meant for Garden Chaudhary w.e.f. 01.01.1997 till he was appointed as Garden Chaudhary after passing the trade test.</i>
33.	8990/2017	<i>In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.3050-4590/- (revised from time to time) meant for Garden Chaudhary w.e.f. 01.01.1998 till he looked after the work of Chaudhary with the Management.</i>

2. Since the facts and the legal issues involved in the present batch of petitions are similar, this Court has culled out the facts and submissions out of the writ petition bearing W.P (C) no. 2990/2017 for the disposal of the present batch of petitions.

FACTUAL MATRIX

3. The instant petition has been filed on behalf of the petitioner seeking quashing of the award dated 29th February, 2016 (hereinafter “impugned award”) by the learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, New Delhi in case bearing ID no. 25/13 (238/16).



4. It has been stated that the workman was employed as a ‘Mali’ with the petitioner department w.e.f. 1st April, 1989 at the pay scale of Rs. 750/- – 940/- revised from time to time.

5. In the year 2013, the respondent workman raised a dispute before the appropriate government that he was not being paid as per the pay scale prescribed for the post of Garden Chaudhary despite working at the said post w.e.f. 1st April, 1991.

6. Upon failure of conciliation proceedings, the appropriate government referred the dispute to the learned Industrial Tribunal for adjudication in terms of the following reference:

“Whether Sh. Siroman Singh S/o Sh. Inderpal Singh is entitled to the status of Choudhary in the pay scale of Rs.950-1500/- w.e.f. 01.01.1991, revised from time to time along with the consequential benefits and if so, to what relief is he entitled and what directions are necessary in this respect?”

7. The respondent workman filed his statement of claim stating that he was initially employed on the post of *Mali* in the Central Zone and is presently posted at Shahdra South Zone under the Deputy Director of Horticulture, Shahadra South Zone as the Garden Chaudhary. Despite this, he has not been paid as per the pay scale he is eligible for. The petitioner department filed its written statement denying the workman’s claim and after the completion of pleadings, the learned Tribunal framed the following issues for adjudication:

*“1. whether present dispute is an Industrial Dispute as defined in section 2(k) of the Industrial Disputes Act? OPW
2. Whether the claim of the workman has been properly espoused by the Union? OPW*



3. Whether any notice of demand was served upon management, if not, its effect? OPW
4. As per terms of reference.”

8. The learned Tribunal passed the impugned award dated 29th February, 2016 allowing the claim of the respondent workman, thereby, holding that the workman is entitled to the status of Garden Chaudhary and to the pay scale attached to the said post for the period he worked as Garden Chaudhary, i.e., w.e.f. 1st April, 1991. In pursuant thereto, a recovery certificate dated 2nd November, 2016 was issued by the Deputy Labour Commissioner East District, Labour Department, Government of NCT of Delhi against the present petitioner for making the payment of Rs. 8,16,472/-.

9. Being aggrieved by the aforementioned impugned award, the petitioner filed the instant petition seeking setting aside of the same.

PLEADINGS BEFORE THIS COURT

10. The petitioner has challenged the impugned award on the following grounds:

“...(ii) That the respondent workman has filed its Statement of claim before the Ld. Tribunal claiming that the workman was initially on the post of Mali in Central Zone and later on he was regularized /promoted on the same post, so he cannot be regularized/ promoted on the post of Garden Chaudhary and the claim filed by the respondent is misconceived and liable to be rejected on the sole ground. It is submitted that respondent is presently posted at Shahdra South Zone.

(iii) That it is submitted that the workman was not allotted the work of Chaudhary on 1.1.1991. It is submitted that the workman is performing the duties of Mali and he was never allotted the work of Garden Chaudhary by the competent



authority. No copy of any office order has been placed by the workman to show that he was working on the said post of Garden Chaudhary.

(iv) That the workman has never performed the duties of Garden Chaudhary and no such type of office order was ever issued by the competent authority. Therefore, the question of pay scale of Garden Chaudhary does not arise. Therefore, the claim filed by the respondent-workman should have been rejected by Ld. Labour Court.

(v) That the recruitment rules for the post of Mali and Garden Chaudhary are totally deferent. Garden Chaudhary is not promotional post of Mali and moreover, qualifying the trade test is mandatory for the promotion to the post of Garden Chaudhary, the claim of the workman is totally baseless.

(vi) That the workman cannot be designated as Garden Chaudhary because of he never worked on the same post. There is a process for promotion to the post of Garden Chaudhary i.e there must be sanctioned post/vacant post of the garden Chaudhary and claimant should pass the trade test conducted by the department. It is submitted that the claimant has never passed the trade test as such, his present claim is misconceived and is contrary to the provisions of notified....

(vii) That the petitioner has appeared before the Ld. Tribunal and contested the claim of the respondent by filing the detailed written statement in opposition to the statement of claim and contended that present dispute is not an industrial dispute, but is an individual dispute. The petitioner administration further contended that no demand notice has been served upon the petitioner management and as such, the present dispute is not an industrial dispute and therefore, reference is bad in law and is liable to be rejected.



(v) That the respondent/workman has failed to adduce any documentary evidence or oral evidence in support of his contention that Respondent/workman had been performing his duty of Garden Choudhary w.e.f. 01.01.1991. Respondent has made merely an equivocal contentions, therefore, entire contention of respondent is on the basis of the vague contention. However, Petitioner administration has denied that respondent workman has not discharged the duties of Garden Choudhary. Therefore, question does not arise for giving the pay scale of the Garden Chaudhary to the respondent workman. It is further submitted that merely inclusion of the name of the workman in the panel does not entitle him for the pay scale of the post of Garden Chaudhary.

A. Because Ld. Industrial Tribunal has failed to appreciate the fact that the claim of the respondent is not maintainable before the Ld. Tribunal below because Respondent was seeking the status of the Garden Choudhary on the retrospective effect.

B. Because impugned judgment passed by the Ld. Tribunal in utter disregard with the admitted fact that respondent is not entitled for the promotion to the post of Garden Chaudhary w.e.f. 01.01.91 because the post of the Garden Chaudhary is not the promotional post and same is required to be filled up by way of conducting the trade test and only those who have qualified the prescribed test for the post is entitled to get promoted to the post of Garden Choudhary. Therefore, in the absence of qualifying in any trade test prescribed for the post, the workman cannot be entitled to get the pay scale of the said post w.e.f. 1991. Therefore, the impugned judgment of the Tribunal below is bad in law and is liable to be quashed by this Hon'ble Court.

C. Because Ld. Industrial Tribunal has failed to appreciate the fact that the workman was not allotted the work of Chaudhary on 1.1.1991. It is submitted that the workman is



performing the duties of Mall and he was never allotted the work of Garden Chaudhary by the competent authority. No copy of any office order has been placed by the workman to show that he was working on the said post of Garden Chaudhary.

E. Because Ld. Industrial Tribunal has failed to appreciate the fact that the recruitment rules for the post of Mali and Garden Chaudhary are totally deferent. Garden Chaudhary is not promotional post of Mali and moreover, qualifying the trade test is mandatory for the promotion to the post of Garden Chaudhary, the claim of the workman is totally baseless.

F. Because Ld. Industrial Tribunal has failed to appreciate the fact that workman cannot be designated as Garden Chaudhary because of he never worked on the same post. There is a process for promotion to the post of Garden Chaudhary i.e there must be sanctioned post/vacant post of the garden Chaudhary and claimant should pass the trade test conducted by the department. It is submitted that the claimant has never passed the trade test as such, his present claim is misconceived and is contrary to the provisions of law....”

11. The respondent workman has filed his counter affidavit rebutting the petitioner’s contentions on the following grounds:

“..2. That the writ petition filed by the petitioner is not maintainable as it is covered by several orders passed by the Hon'ble High Court of Delhi. The main case of the Department which is Sultan Singh's case also stand dismissed by the Hon'ble Supreme Court. The workman has been only granted the pay scale of Garden Chaudhary w.e.f. 01.04.991 till date in the pay scale of Rs.950 - 1500 (revised from time to time) meant for Garden Chaudhary for which period he was directed to perform the work of Garden Chaudhary and for which after the award, the payment has



already been made.

*The copy of the order passed by Hon'ble High Court of Delhi in MOD Vs. Jai Pal Singh (WP(C) No. 5521/2011) is annexed herewith and marked as **Annexure C-1**.*

*The copy of the order passed by Hon'ble High Court of Delhi in MCD Vs. Mahipal (WP(C) No. 5550/2010) is annexed herewith and marked as **Annexure C-2**.*

*The copy of the order passed by Hon'ble High Court of Delhi in MCD Vs. Satinder Singh (WP(C) No. 5066/2010) is annexed herewith and marked as **Annexure C-3**.*

*The copy of the order passed by Hon'ble High Court of Delhi in MCD Vs. Kanwar Singh (WP(C) No. 4940/2010) is annexed herewith and marked as **Annexure C-4**.*

*The copy of the order passed by Hon'ble High Court of Delhi in MCD Vs. Sh. Sultan Singh & Ors. (WP(C) No. 7947/2010) is annexed herewith and marked as **Annexure C-5**.*

*The copy of the order passed by Hon'ble Supreme Court in MCD Vs. Sultan Singh & Ors. (SLP(C) No. 20069/2011) is annexed herewith and marked as **Annexure C-6**.*

*The copy of the order passed by Hon'ble High Court of Delhi in Sultan Singh & Ors. Vs. MCD (WP(C) No. 5453/2012) is annexed herewith and marked as **Annexure C-7**....”*

12. Written submissions dated 25th May, 2024 filed by the petitioner and written submissions dated 16th October, 2022 filed by the respondent workman are on record.

SUBMISSIONS

(on behalf of the petitioner)

13. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and is liable to be set aside since the same has been passed without taking into consideration the entire facts and circumstances of the case.



14. It is submitted that the learned Tribunal failed to appreciate that the workman was not allotted the work of Garden Chaudhary on 1st April, 1991 and he has been merely performing the work of Mali. It is further submitted that no copy of any office order has been placed by the workman on record to show that he was working on the said post. Therefore, the aforesaid facts clearly aver that the workman has never performed the duties of a Garden Chaudhary.

15. It is submitted that the learned Tribunal erred in law by failing to appreciate that the recruitment rules for the post of Mali and Garden Chaudhary are totally different.

16. It is submitted that the post of Garden Chaudhary is not a promotional post of Mali and moreover, qualifying the trade test is mandatory for the promotion to the post of Garden Chaudhary, and thus, the claim of the workman is baseless and misconceived.

17. It is submitted that the respondent workman cannot be designated as Garden Chaudhary because he never worked on the same post. There is a process for promotion to the post of Garden Chaudhary, i.e., there must be sanctioned post/vacant post of Garden Chaudhary and the workman should pass the trade test conducted by the department. It is submitted that the workman has never passed the trade test, and hence his claim is misconceived and wrongly adjudicated by the learned Tribunal.

18. It is submitted that the respondent workman has failed to adduce any documentary or oral evidence in support of his contention that the respondent workman had been performing his duty of Garden Chaudhary w.e.f. 1st April, 1991.



19. It is submitted that the respondent has merely made equivocal contentions, therefore, the same are vague due to lack of substantial evidence. It is further submitted that mere inclusion of the name of the workman in the panel does not entitle him to the pay scale for the post of the Garden Chaudhary.

20. It is submitted that the impugned award is not sustainable in the eyes of law as the learned Tribunal failed to appreciate the fact that the respondent was promoted to the promotional post, i.e., Garden Chaudhary w.e.f. 29th July, 2005 upon qualifying the trade test as envisaged on the post.

21. It is further submitted that the finding that the respondent herein has worked for the post in question w.e.f. 1st April, 1991 is merely on the basis that no suggestion was put to the respondent in his cross examination that he had not worked as Garden Choudhary w.e.f. 1st April, 1991.

22. It is also submitted that the learned Tribunal has placed reliance upon Ex. WW1/1 which is a list of names of the workman as per which it has been stated that the respondent workman was appointed to work as Garden Chaudhary. It is submitted that the said list cannot be relied upon by the learned Tribunal as there is no other evidence to prove that the workman was working at the said post as claimed.

23. It is submitted that as per the judgment of the Hon'ble Supreme in *State of Orissa v. Pyari Mohan Misra (Dr)*¹ even if the respondent workman was allowed to officiate on the promoted post, in addition to his substantive post, without selection by the Departmental Promotion

¹ (1995) 3 SCC 123



Committee (hereinafter “DPC”), the same does not confer any right on the workman to claim regular scale of pay in the said officiating post.

24. It is further submitted that the onus to prove the above said fact is upon the respondent workman that he has worked on the said post w.e.f. 1st April, 1991, however, the respondent has failed to discharge its onus and failed to prove its contention by adducing either any documentary or oral evidence. Therefore, in the absence of any material on record, the learned Tribunal is not justified in holding that the respondent has worked on the post in question w.e.f. 1st April, 1991.

25. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

(on behalf of the respondent workman)

26. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

27. It is submitted that the learned Tribunal rightly adjudicated the workman’s claim by granting him the pay scale of Garden Chaudhary w.e.f. 1st April, 1991.

28. It is submitted that the workman had produced a list of the names of the workman marked as Ex. WW1/1 where his name appeared at serial no. 42, thereby, showing that the workman was earlier working as Mali, appointed on 1st April, 1989 and thereafter, he has been working as Officiating Garden Chaudhary w.e.f. 1st April, 1991. It is further



submitted that the said list was issued by the petitioner department and the same has not been denied, thus, rightly considered by the learned Tribunal in favour of the workman.

29. It is submitted that the legal issue raised in the instant writ petition is covered by the judgment of the Division Bench of this Court passed in the case of *Municipal Corpn. of Delhi v. Sultan Singh*². It is further submitted that in the said judgment, it was held by the Division Bench of this Court that the claim of the workmen therein has always been that they should be paid the difference in pay of a Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary.

30. It is submitted that the aforesaid judgment of the Division Bench of this Court was challenged before the Hon'ble Supreme Court where the same was dismissed as withdrawn vide order dated 9th April, 2012 in case titled as *Municipal Corp. of Delhi v. Sultan Singh & Ors.*³.

31. It is submitted that the instant petition is nothing but a gross abuse of process of law and there is nothing on record to show any illegality in the findings of the impugned award or the reasoning behind the same.

32. It is submitted that this Court cannot delve into the facts of the matter as the same is the prerogative of the learned Tribunal which is empowered to adjudicate upon the industrial disputes under the Industrial Disputes Act, 1947.

33. It is submitted that under Article 226 of the Constitution of India, this Court does not have the jurisdiction to re-appreciate the evidence on

² 2011 SCC OnLine Del 1839

³ S.L.P (C) no. 20069/2011



record and issue a writ until there is any error apparent on the face of the record.

34. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed being devoid of any merits.

ANALYSIS AND FINDINGS

35. The matter was heard at length with arguments advanced by the learned counsel for the respective parties. This Court has perused the entire material on record and has also duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel for the parties.

36. It is the case of the petitioner department that the impugned award is bad in law since the learned Tribunal erred in holding the respondent workman entitled to the status of Garden Chaudhary w.e.f. 1st April, 1991 and therefore, entitled to the pay scale of the said post. It has been contended on behalf of the petitioner department that the respondent workman was appointed on the post of Mali w.e.f. 1st April, 1989 and since then he has been working as a Mali in the petitioner department. It has been submitted that the respondent workman cannot claim the status of Garden Chaudhary w.e.f. 1st April, 1991 since he did not possess the necessary qualification at the relevant time. The petitioner further contends that other than not being qualified for promotion to the post of Garden Chaudhary, the respondent workman did not even pass the trade test for appointment to the said post. Moreover, the respondent workman has failed to adduce any evidence to show that he was working as Garden Chaudhary with the petitioner department. Therefore, the impugned award is liable to be set aside being against the settled position of law.



37. In rival contentions, the respondent workman has vehemently opposed the instant petition contending to the effect that there is no illegality in the impugned award and the present writ petition is without any merits. It has been submitted that the present case is covered by various decisions of this Court as well as the Hon'ble Supreme Court *qua* the similar facts and circumstances and the petitioner is merely prolonging the issue unnecessarily. It has been contended that the respondent workman has only been granted the pay scale of Garden Chaudhary w.e.f. 1st April, 1991 till date, meant for Garden Chaudhary for which period he was directed to perform the work of Garden Chaudhary. The respondent contends that as per the judgment of the Division Bench of this Court in *Sultan Singh (Supra)*, appeal against which was also dismissed by the Hon'ble Supreme Court, the impugned award has been rightly passed in favour of the workman. Learned counsel appearing on behalf of the respondent workman also placed reliance upon the judgment dated 20th March, 2012 of the Coordinate Bench of this Court in the matter of *M.C.D. v. Jai Pal Singh*⁴ wherein a similar matter was decided in favour of the workman therein and the petitioner department therein was directed to pay the difference in the pay of Mali and Garden Chaudhary from 1st April, 1991 till the time he had performed the duties of Garden Chaudhary. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

38. At this stage, this Court deems it appropriate to peruse and discuss the finding of the learned Industrial Tribunal. The relevant paragraphs of the impugned award are as under:

⁴ W.P (C) no. 5521/2011



“.....2. Statement of claim has been filed by the Workman, wherein it is stated that workman was employed as Mali w.e.f. 01.04.1989 that he was allotted the work of Chaudhary w.e.f 01.01.1991 by the order of Competent Officer of the Horticulture Department. It is averred that workman has got the payment in lower pay scale of Mali i.e. Rs.750-9401-revised from time to time but he is denied the pay scale of Rs.950-1500/- for his performing the duty of Chaudhary w.e.f 01.01.1991. The Mali comes under the category of unskilled worker while Chaudhary comes under the category of skilled worker. It is further averred that Hon'ble High Court of Delhi in CW no.5514/2001 has disapproved the non- I payment vide order dated 2.5.2003 for the post of Chaudhary and MCD vide order no. ADC(Hort)/A.O.(Hort)/DA-VII/055/457 dated 4.3.2005 has implemented the said order of the Hon'ble High Court of Delhi. It is further averred that the Commission, MCD vide order no.LWD/HQ/05/5 16 dated 29.07.2005 has accorded permission to MCD General Mazdoor Union for negotiation and correspondence in respect of the workman working in Horticulture Department of MCD and that the Managing Committee of MCD General Mazdoor Union in the meeting held on 05.06.2011 sponsored the cause of Sh. Siroman Singh to raise the dispute for regularization as Chaudhary.

It has been prayed that the workman may kindly be granted status of Garden Chaudhary in the pay scale of Rs.950-1500/- w.e.f 01.01.1991.

3. The Management has filed the Written Statement to the claim of the Workman thereby taking preliminary objections that the present dispute is not an industrial dispute as it is not espoused by the Union and the workman has also not authorized the Union to file the present claim. Further, plea of the Management is that no demand notice has been served upon the Management. It is averred that the workman was initially on the post of Mali and later on he was regularized/promoted on the same post, so he cannot be



regularized on the post of Garden Chaudhary as he has never performed his duties as Garden Chaudhary. It is further averred that the rules for the post of Mali and Garden Chaudhary are totally different. Chaudhary is not the promotional post and test has to be qualified to become Chaudhary. It is further averred that the present workman never worked on the post of Garden Chaudhary and to become Chaudhary there must be sanctioned post. The claimant has never passed the trade test and there is no office order issued for assigning the duties of Garden Chaudhary. The Management has denied the contents of the statement of claim in parawise reply on merits and averred that the claim of the claimant may kindly be dismissed.

4. On the pleadings of the parties, following issues were framed on 18.07.2013:-

ISSUES

- 1. Whether present dispute is an Industrial Dispute as defined in Section 2(k) of Industrial Dispute Act? OPW*
- 2. Whether the present claim of the workmen has been properly espoused by the Union? OPW*
- 3. Whether any notice of demand was served upon Management, if not, its effect? OPW*
- 4. As per terms of reference.*

5. In Workman Evidence, the workman Siroman Singh examined himself as WW1. In his affidavit, WW1 has reiterated more or less the contents of statement of claim. He has stated that he was allotted the work of Acting Chaudhary w.e.f 01.01.91 and his name is appearing at Sr.no.42 on Ex.WW1/3. The MOD has granted the pay scale to Sh Jai Chand vide order Ex.WW1/2. He also exhibited the copy of order of case titled Sultan Singh & ors. As ex.WW1/3. In cross examination, he has stated that it is correct that he was holding the post of Mali w.e.f 01.01.91 Volunteered he was allotted the work of Chaudhary w.e.f 01.01.91. He was regularly promoted to the post of Garden Chaudhary w.e.f 04.03.2014. He qualified the trade test.



6. WW2 Sh BK Prasad is the President of MCD General Mazdoor Union and he proved the registration copy of the Union as EX.WW2/1. The order of MCD for negotiation is Ex.WW2/2. The Managing Committee of MCD General Mazdoor Union in its meeting held on 11.04.2011 sponsored the cause of workman to raise the dispute and copy of said sponsorship is Ex.WW2/3. List of office bearers is Ex.WW2/4. In cross examination, he denied the suggestion that the union is not a registered union. He further denied the suggestion that he is not the President of the Union or that no meeting was held on 11.04.2011.

7. The Management in its Evidence has examined one witness MW1 Mewa Ram who has reiterated that contents of written statement that the workman has never performed the duty of Garden Chaudhary and that for the post of Garden Chaudhary there is process i.e. there must be sanctioned post and the test has to be qualified. He proved the copy of service book of workman as Ex.WW1/1 (colly). In cross examination, he has deposed that it is admitted that workman has been promoted since 04.03.20 14. After seeing EX.WW1/1, he replied that office file number is not mentioned and that the Dy. Director (Hort.) has no power to direct the Mali/Gardner to look after the work of Chaudhary. He admitted that Ex.WW1/1 has already been got verified by the Astt. Director (Horticulture). He admitted that nowadays Sh. Narpat Singh is posted in Shahdara, North Zone.

He admitted that Ex.WW1/3 was issued by Director (Horticulture). He admitted that after joining by Siroman in their department, he has been looking after the work of Chaudhary. He admitted that if the rules allow to give the money for the period working as Chaudhary by the Workman, Siroman Singh, till he is appearing in the examination conducted by the Department for promotion as Chaudhary, then he is eligible to get the said amount from



the department.

8. I have heard the arguments from Sh. BK Prasad, Ld. AR for the Workman and Sh. Naveen Singia, Ld. AR for Management. I have carefully perused the evidence on record. My issues wise findings are as under
ISSUE NO.1

1. Whether present dispute is an Industrial Dispute as defined in Section 2(k) of Industrial Dispute Act? OPW

9. The onus to prove this issue is on the Workman. Section 2(k) of ID Act provides as below: "industrial dispute" means any dispute or difference between employers and employee or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person"

In Municipal Employees Union Vs. The Secretary (Labour) & Anrs. 1999 LLR 1020, it has been held that

"It is clear that even a dispute between an employer and his workmen which is connected with non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workman of the employer at the time of raising the dispute. A dispute can be raised by the workmen of the employer even in respect of the non-employment of any person, who is not his workman at the material time".'

I have also perused Schedule II & III of I.D Act which contemplates: -

10. Workman has examined Sh BK Prasad, President of MCD General Majdoor Union as WW2 in this present case. In his affidavit, filed by way of an evidence, he has produced the copy of espousal sponsorship dated 11.04.2011 as Ex.WW2/3, copy of Union registration certificate as Ex.WW2/1. No question has been put to any of the workman witnesses by the Ld. AR for the Management that the present dispute is not an industrial dispute as defined u/s 2(k) of ID Act. The present workman is employed in East Delhi Municipal Corporation. He has raised the plea that the work



of Garden Chaudhary was being taken from him while he was being paid as per the scale of Mali. Thus, it is held that the present dispute is an industrial dispute as defined in section 2(k) of I. D. Act. Issue no.1 is decided accordingly in favour of the workman.

ISSUE NO.2

Whether the present claim of the workmen has been properly espoused by the Union? OPW

11. The onus to prove this issue is on the workman. The workman has examined WW2 Sh. B.K. Prasad, President of the Union who has proved the espousal letter issued by Sh. Bhoop Singh, General Secretary of MCD General Mazdoor Union(Regd). The copy of the said letter dated 11.04.2011 is available on file as EX.WW2/3. In reference order, the name of the Union specifically mentioned. In cross examination, no question has been asked by the Ld.AR from WW1 that his case has not been properly espoused. No question has also been asked with regard to meeting of the union. Only suggestion has been put to WW2 with regard to espousal which will not affect the case of the workman. In view of this, I am of the view that the cause of the workmen has been duly espoused. Issue no.1 is decided accordingly in favour of the workman.

ISSUE NO.3

Whether any notice of demand was served upon Management, if not, its effect? OPW

12. The onus to prove this issue is on the Workman. However, perusal of the record shows that workman has failed to prove that he sent any demand notice to the management.

13. In Shambu Nath Goyal Vs. Bank of Baroda, Jullundur, (1978), 2 SCR 793, Hon'ble Supreme Court after referring to section 2(k) of the Industrial Dispute, 1947, which defines "industrial dispute", held as below:



"A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or terms of employment or with the condition of labour of any person, there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into- existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because section forbids going on strike without giving a strike notice".

14. Though, no demand notice has been served upon the management, yet in view of above judgment, it will have no material affect on the award as no such notice was required to be given. Issue no.3 is decided accordingly.

ISSUE NO.4

4. As per terms of reference.

The terms of reference is - "Whether Sh Siroman Singh S/o Sh. Inderpal Singh is entitled to the status of Chaudhary in the pay scale of Rs.950-1500 with effect from 01.01.1991 revised from time to time along with all consequential benefits and if so, to what relief is he entitled and what directions are necessary in this respect?"

15. The Workman has deposed in his affidavit filed in his evidence that he was working as acting Chaudhary w.e.f 01.01.91 and his name appears at sr.no.42 in Annexure W which is Ex.WW1/1. I have perused the said exhibited document. It clearly shows that the employees from sr.no.1 to 43 were working as Officiating Chudharies with the Management. The list clearly show that the persons were earlier working as Mali who have been working as Chaudhary w.e.f the date mentioned against their names. The perusal of Ex.WW1/1 shows that the name of Workman appears at sr.no.42 i.e. Siroman sb Inderpal, earlier working



as Mali, appointed on 01.04.1989, working as Officiating Chaudhary w.e.f. 01.04.1991. This list has been signed by Dy. Director (Horticulture). This document has been issued by Management. It has not been denied by the Management that this document does not belong to then' or that it is a false or procured document. In cross examination, WW1 Workman has deposed that he has been regularly promoted to the post of Garden Chaudhary w.e.f 04.03.2014. He qualified the trade test for the post of Garden Choudhary. The document Ex.WW1/1 clearly indicate that the workman started working as Chaudhary w.e.f. 01.04.199 1 though the passed the required test later and promoted to the post of Chaudhary.

16. The Management has also led the evidence to counter the claim of the workman. But the plea of the management that the workman never performed the work of chaudhary is unbelievable since the the document EX.WW1/1 issued by management clearly indicate that the workman used to perform the duty of Chaudhary w.e.f. 01.04.1991. I have perused the service book of the workman Ex.MW1/1 (colly.). The said service book clearly show that the workman has been getting the pay scale applicable to Mali while he has been working as Chaudhary w.e.f.01.04.1991.

17. Workman has also deposed that the Management has granted the pay scale to Sh. Jal Chand (co-worker) and order of MCD In this respect Is Ex.WW1/2.1 have perused the said order. It clearly Indicate that the order of Hon'ble High Court dated 02.05.2003 passed In CWP No.6514/2001 In the matter of Jal Chand Vs. MCD & Ors. And order dated 24.09.2004 passed In CWP no. 4799/2000 In the matter of MCD Vs. Jal Chand are implemented. It is therefore, clear that the Management has already implemented the scale to its worker Jai Chand.

18. In Selvaraj Vs. Ltd. Governor of Island, Port Blair (1998) 4 SCC 291, It is held that The employee was not



regularly promoted to the post of Secretary (scouts) but he was regularly asked to look after the duties of Secretary (Scouts). Applying the principle of quantum merit it was held by the Supreme Court that the authorities should have paid to the employee the emoluments available in the higher pay scale during the time he actually worked on the said post of secretary (Scouts) though in an officiating capacity and not as a regular promote.

19. In M.C.D Vs. Sultan Singh & Ors. WP (C) NO.7974/2010, it is observed that 'considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assiatant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on adhoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation. In the entirety of facts & circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this court to exercise its jurisdiction under Article 226 of the Constitution to set aside the order of the Tribunal dated 291/1 Jan 2010 and 7th Oct. 2010 as no illegality or un-sustainability or perversity in the orders of the Tribunal has been made out.

20. In view of my above discussions and Judgment quoted above and considering Ex.WW1/1, Workman is entitled to the Status of Chaudhary and he is also entitled to pay scaled attached to this post for the period he worked as Chaudhary.



The Management has been failed to produce any record that the workman was appointed as officiating Chaudhary for some time and that thereafter he stopped working as Chaudhary. On the other hand, it has been admitted that the workman has been promoted as Chaudhary w.e.f. 04.03.2014 after passing required trade test.

21. In view of the entire facts and circumstances of the case, it is held that the workman is entitled for the pay scale of Rs.950- 1500/- (revised from time to time) meant for Garden Chaudhary w.e.f. 01.04.1991 till date. Issue no.2 of the reference is decided accordingly in favour of the Workman....”

39. Upon perusal of the above extracted portion of the impugned award, it is observed that the case before the learned Tribunal revolves around a dispute raised by Sh. Siroman Singh, a workman, regarding his entitlement to the pay scale and status of a Garden Chaudhary. The workman's claim stated that he was employed as a Mali from 1st January, 1989 and was assigned the duties of a Garden Chaudhary from 1st April, 1991, by a competent officer in the Horticulture Department, i.e., Deputy Director (Horticulture). Despite performing the duties of a Garden Chaudhary, he continued to receive the lower pay scale of a Mali. The pay scale for a Mali was Rs. 750/- -940/-, whereas a Garden Chaudhary, categorized as a skilled worker, had a pay scale of Rs. 950/- -1500/-. The workman had placed reliance upon a judgment of this Court and subsequent Municipal Corporation of Delhi orders which disapproved the non-payment for the post of Garden Chaudhary and directed the petitioner department therein to make the payment of the difference of the pay scale.



40. The petitioner management contested the workman's claim, arguing that the dispute did not qualify as an industrial dispute since it was not properly espoused by a union and no demand notice was served upon it. It was asserted that the workman was initially and regularly promoted as a Mali, not a Garden Chaudhary, and had never performed the duties of a Garden Chaudhary. Furthermore, the petitioner department emphasized that Garden Chaudhary is not a promotional post from Mali; it requires passing a test, and the workman in the instant case had never passed such a test nor was there an office order for him to act as Garden Chaudhary.

41. The issues framed for determination of the learned Tribunal included whether the dispute qualifies as an industrial dispute under the Industrial Disputes Act, 1947, if the claim was properly espoused by the union, and the effect of the absence of a demand notice, and as per the terms of the reference. Evidence presented included testimonies from the workman and a union representative, along with documentary evidence supporting workman's claim that he performed Garden Chaudhary duties from April, 1991.

42. The learned Tribunal observed that the dispute raised before it qualifies as an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 noting that the workman's union had properly espoused the cause. Despite no formal demand notice being served, the dispute was recognized as valid, following legal precedents of the Hon'ble Supreme Court, indicating that a written demand is not a prerequisite for an industrial dispute's existence.

43. The learned Tribunal noted that the examination of evidence revealed the workman's name on a list of employees performing as



officiating Garden Chaudharies and the acknowledgment by the management that the workman was promoted to Garden Chaudhary in the year 2014 after passing the required trade test. The learned Tribunal noted that although he was formally promoted later, the workman performed the duties of Garden Chaudhary from 1991. Citing previous judgments of the Hon'ble Supreme Court as well as this Court, the learned Tribunal underscored the principle that employees should be compensated for higher responsibilities undertaken, even if formal promotions occur later.

44. In conclusion, the learned Tribunal decided the claim in favor of the workman, entitling him to the pay scale of Rs. 950/- -1500/- for Garden Chaudhary, effective from 1st April, 1991, till date, including all the consequential benefits. The reasoning behind the same was based on the evidence that the workman performed the duties of a garden Chaudhary from 1991, and the management's inability to refute the claim effectively.

45. Therefore, the question that arises for the consideration of this Court are as follows:

Issue no. 1 – Whether the respondent workman is entitled to the post of Garden Chaudhary w.e.f. 1st April, 1991?

Issue no. 2 – Whether the respondent workman is entitled to the pay scale attached to the post of Garden Chaudhary for the period he has worked on the said post on officiating status?

Issue no. 1 – Whether the respondent workman is entitled to the post of Garden Chaudhary w.e.f 1st April, 1991?



46. Before delving into the analysis of the instant issue, this Court deems it imperative to state the settled position of law with respect to the entitlement to a post without having been officially appointed to the said post.

47. In addressing whether a person who is not officially appointed/promoted to a post can be entitled to the said post merely because they were working in an officiating or *ad hoc* or acting or temporary position or as a stop gap arrangement, it is crucial to apply legal principles and precedents relevant to employment law and industrial disputes.

48. As per the settled position of law, appointment to a post has to be made after following the due process of law. Appointment made to a post without following the established recruitment process is contrary to the constitutional mandate as well as the basic fundamental and legal rights.

49. Recruitment rules and qualifications for a post are designed to ensure that only those with the requisite skills and expertise occupy positions of responsibility. Courts generally uphold the necessity of complying with these rules to maintain organizational standards and fairness.

50. In *Shankarsan Dash vs. Union of India*⁵, the Hon'ble Supreme Court held that even if a candidate is selected for a post, they do not acquire a right to be appointed unless there is a formal appointment following the prescribed procedure. The relevant portion of the said judgment is as under:

⁵ (1991) 3 SCC 47



“...10. The main contention on behalf of the appellant has been, however, that the authorities in keeping the vacancies arising later unfilled, acted arbitrarily. Mr Goswami referred to several documents annexed to the special leave petition and affidavits filed on behalf of the parties and contended that although appointments of many candidates in the other services were made in the later vacancies, the vacancy in the Indian Police Service which subsequently became available to the appellant was refused without any just cause, resulting in illegal discrimination. This was emphatically denied on behalf of the respondent. Since the matter did not appear to be free from ambiguity on the basis of the affidavits before us, we decided to examine the factual aspects more thoroughly by examining the other available materials on the records of the Union of India, and accordingly the learned counsel for the respondent got the relevant departmental files called. Two further affidavits were also filed along with photostat copies of a large number of documents, which we examined at some length with the aid of the learned advocates for both sides. From the materials produced before us it is fully established that there has not been any arbitrariness whatsoever on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed. Mr Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen to which the appellant and the other successful candidates should have been adjusted. We do not find any merit in this contention. It is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments were concluded later. What is relevant is to see as to when the process of final selection was closed. Mere completing the formalities cannot be of any help to the



appellant. We do not consider it necessary to mention all the details in this connection available from the large number of documents which we closely examined during the hearing at considerable length and do not have any hesitation in rejecting the argument of the learned counsel in this regard based on the factual aspect...”

51. Moving further, this Court is of the view that officiating positions are temporary arrangements and do not confer any right to the substantive post. Also, the retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation. Additionally, it is the DPC which is tasked with determining and finalizing the process of promotion to a certain post and unless the decision of the said DPC is proven to be arbitrary or *mala fide*, it cannot be said that the same requires intervention of the Courts.

52. Similar view was also taken by the Hon’ble Supreme Court in ***K. Madhavan vs. Union of India***⁶, where the Hon’ble Court observed that officiating in a higher post does not entitle an employee to a permanent promotion unless they meet the eligibility criteria and are appointed through due process. The relevant paragraphs of the same read as under:

“...10. The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression “on a regular basis”. The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression “on a regular basis” in the 1975 Rules cannot, in our opinion, be

⁶ (1987) 4 SCC 566



interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression “on a regular basis” would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG. But, it is not disputed by the parties that the petitioners and Respondent 5 have, by the lapse of time during the pendency of this litigation, become eligible for appointment to the posts of DIG. Indeed, they are holding the posts of DIG, may be on ad hoc basis, under the interim orders of this Court and there is no chance of their being reverted to the next lower post of SP. The question, therefore, boils down to the seniority of the petitioners, vis-à-vis Respondent 5 in the post of DIG. That again will depend upon the decision on the question as to the seniority of the petitioners and Respondent 5 in the post of SP.

15. *There can be no doubt that if the meeting of the DPC scheduled to be held is arbitrarily or mala fide cancelled without any reasonable justification therefor to the prejudice of an employee and he is not considered for promotion to a higher post, the government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held, with retrospective effect so that he is not subjected to a lower position in the seniority list. But, if the cancellation or postponement of the meeting of the DPC is not arbitrary and is supported by good reasons, the*



employee concerned can have no grievance and the government will not be justified in appointing the employee to the higher post with retrospective effect. An employee may become eligible for a certain post, but surely he cannot claim appointment to such post as a matter of right...”

53. During the course of arguments, the petitioner placed reliance upon the judgment of the Hon’ble Supreme Court in **Pyari Mohan Misra (Supra)** contending that even if the respondent workman, in addition to his substantive post was allowed to officiate on the promoted post, *de hors* of selection in DPC, the same does not confer any right on the respondent to claim regular scale of pay in the said promoted post. Relevant paragraphs of the said judgment are as follows:

“..4. Admittedly, there is no order communicated to the respondent appointing him in a substantive capacity as Director. The only order passed in his favour was of 22-7-1972. That order clearly shows that he would continue temporarily until further orders in terms of the order of appointment made on ad hoc basis on 12-8-1971. In other words, mere prolonged continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status. He would remain to be on ad hoc basis until further orders. Since the Government had taken policy decision to appoint an IAS officer, he was rightly reverted to the post of Joint Director. Accordingly, we hold that his reversion is perfectly legal and valid. However, the stark facts remain that he continued in the post of Director and discharged his duties as Director from 12-8-1971. In these circumstances, as a mark of good gesture but not as a precedent, the appellants are directed to give him pensionary benefits computing his pay as if he voluntarily retired as a Director from 16-12-1977. All the proceedings now stand concluded. The TA stands dismissed. The appeal is disposed of accordingly. No costs...”



54. Perusal of the above judgment states that mere prolonged continuous *ad hoc* service does not entitle the employee to claim appointment into a regular service or to claim permanent or substantive status. This Court is also of the view that unless the circumstances speak otherwise, mere working in a particular post on *ad hoc* does not vest any right to be appointed permanently in the said post as the same would be contrary to the recruitment rules and violative of various constitutional mandates.

55. In light of the facts of the instant case, it is observed that Ex. WW1/1, which is the part of the Trial Court Record is a list of workers working as Officiating Chaudharies, and in Ex. WW1/1, the respondent workman's name appears to be at serial no. 42. Moreover, in paragraph no. 15 of the impugned award, the workman has also duly admitted that he was working as 'acting Chaudhary' w.e.f. 1st April, 1991.

56. Furthermore, as per the rules of recruitment of the petitioner department, the respondent is not entitled for the promotion to the post Garden Chaudhary w.e.f. 1st April, 1991 because the said post is the promotional post and the same is required to be filled by way of conducting a 'trade test' and only those who have qualified the prescribed test for the post are entitled to get promoted to the post of Garden Chaudhary.

57. Although the respondent workman is seen to be working as a Garden Chaudhary upon directions and order of the Deputy Director (Horticulture), however, there is nothing on record to show that he was promoted or appointed to the said post by following the established



recruitment rules of the petitioner department until his official promotion on 4th March, 2014.

58. While the workman performed the duties of a Garden Chaudhary from the year 1991, this alone does not entitle him to the post. There must be clear evidence that his performance met the standards required for the post, thereby, confirming his promotion to the post of Garden Chaudhary after following the due process of law, i.e., trade test.

59. The fact that the respondent workman passed the trade test in the year 2014 is relevant, but it also indicates that prior to this, he did not meet all the necessary qualifications for '*regular promotion/appointment*' to the post of Garden Chaudhary.

60. The workman's entitlement to the post must be evaluated based on the date he met all the requirements, not just when he began performing the duties on officiating/*ad hoc* basis. Precedent like *State of Karnataka v. Umadevi* (3)⁷ particularly states that regular appointments must follow statutory rules. Therefore, the respondent workman's claim to the post must be evaluated against these legal standards, which prioritize adherence to established recruitment procedures.

61. This Court is of the view that if the rules for the higher post require certain qualifications or passing of specific tests, the employee must meet these criteria. Sh. Siroman Singh, i.e., the workman herein passed the required trade test only in the year 2014, which fulfilled this requirement for formal promotion to the post of Garden Chaudhary. As per the law, promotions must be evaluated based on the fulfillment of all requirements at the appropriate time and the respondent workman passed the trade test

⁷ (2006) 4 SCC 1



in the year 2014, indicating he did not meet the necessary qualifications for regular promotion to the post of Garden Chaudhary until that time.

62. The contention of the petitioner department that the workman has failed to discharge the onus of proof that he was performing duties of Garden Chaudhary w.e.f. 1st April, 1991 is untenable in the eyes of law as the respondent workman had duly placed the list of workmen (which includes his name at serial no. 42), duly issued by the Deputy Director (Horticulture) and the said documentary evidence has been rightly taken into consideration by the learned Industrial Tribunal.

63. Based on the legal principles and judicial precedents, it is stated that a person cannot be entitled to a post merely because they were working in an officiating capacity, especially if they were not appointed following the prescribed recruitment rules and necessary qualifications.

64. The principles of equity and fairness must be balanced with the statutory requirements to ensure that appointments are made transparently and based on merit. Therefore, while the respondent workman's long service and performance in the role of Garden Chaudhary might merit consideration, his official appointment to the post must comply with the requisite recruitment rules and qualifications.

65. Summarily stated, the respondent workman is not entitled to the post/status of Garden Chaudhary w.e.f. 1st April, 1991 since he was not appointed on the said post as per the recruitment rules and further, cannot be promoted to the said post until he passed the trade test.

66. This Court is of the considered view that to determine whether the respondent worked as a Garden Chaudhary w.e.f. 1st April, 1991 until 4th March, 2014, i.e., when he was promoted officially, after passing the



trade test, is a question of fact and not a question of law which is the prerogative of the learned Industrial Tribunal and being a writ Court, this Court is only tasked to decide whether the workman is entitled to the post of Garden Chaudhary w.e.f. 1st April, 1991, which has been decided in negative in terms of the observations made in the foregoing paragraphs.

67. It is held that the respondent workman was appointed as an Officiating Garden Chaudhary and he performed the duties of the said post under the orders of the Deputy Director (Horticulture) merely as an Officiating Garden Chaudhary and not as a regular Garden Chaudhary since he did not pass the trade test at the relevant time. The respondent workman's was directed to perform the duties of the above said post and the same was merely a temporary arrangement without vesting any right in his favour to claim entitlement to the said post on regular basis.

68. Accordingly issue no. 1 stands decided.

Issue no. 2 – Whether the respondent workman is entitled to the pay scale attached to the post of Garden Chaudhary for the period he has worked on the said post on officiating status?

69. In order to decide the issue stated herein above, it is prudent for this Court to ascertain the settled legal position behind the entitlement of a person performing the duties of a higher post in an officiating capacity *qua* pay scale of the said higher post.

70. Here, the doctrine of *quantum meruit* comes into picture which implies that a person should be paid for the work done if they have performed duties typically associated with a higher post.

71. The doctrine of *quantum meruit* was applied by the Hon'ble Supreme Court in the case of *Selvaraj vs. Lt. Governor of Island, Port*



Blair⁸, where it was held that the employee was entitled to the emoluments available for the higher post during the time he actually worked in that capacity, even though he was not officially promoted. Relevant portion of the said judgment are as under:

“..3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

⁸ (1998) 4 SCC 291



4. The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9 1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs...”

72. The aforementioned judgment was also followed by the Hon’ble Supreme Court in ***State of Punjab v. Dharam Pal***⁹ and the observations made therein are as follows:

“...10. Certain Notes have been appended to the said Rule but they are not relevant for adjudication of the present controversy. On a close scrutiny, it is noticeable that the said Rule postulates that the government employee appointed to an officiating post shall not draw pay higher than his substantive pay in respect of a permanent post unless the post in which he is appointed to officiate is one enumerated in the Schedule to the Rules and further the officiating appointment involves assumption of duties and responsibilities of greater importance than those attached to the post. It is not in dispute that the posts of Superintendent Grade II and Grade I are covered under the Schedule. Be it mentioned, the extension of benefit is subject to the provisions of Rules 4.22 and 4.24.

13. On a careful scrutiny of the aforesaid prescription, it is perceptible that the said Rule envisages a different situation

⁹ (2017) 9 SCC 395



altogether. The present factual matrix is quite different. We are inclined to so hold as the respondent herein was holding higher posts and further he was performing the duties of higher responsibility attached to the posts. Thus analysed, we arrive at the conclusion that the Rules do not bolster the proposition advanced by the learned counsel for the State.

14. Having analysed the Rule position, we may allude to the authorities that have been commended to us. First, we shall dwell upon the decision in Pritam Singh Dhaliwal [Pritam Singh Dhaliwal v. State of Punjab, 2004 SCC OnLine P&H 1428 : (2004) 4 RSJ 599] that has been relied upon by the High Court in the impugned order. In the said case, the Division Bench of the High Court had placed reliance upon P. Grover v. State of Haryana [P. Grover v. State of Haryana, (1983) 4 SCC 291 : 1983 SCC (L&S) 525 : AIR 1983 SC 1060] and Selvaraj v. Lt. Governor of Island, Port Blair [Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291 : 1998 SCC (L&S) 1127 : (1999) 2 SCT 286] and earlier decisions of the High Court and analysing the Rule position opined that the officer therein had been asked to officiate as Deputy Director with effect from 14-3-1996 and he had been continuously posted to equivalent posts such as Additional Deputy Commissioner (D) and till his superannuation the officiating charge was never withdrawn and hence, his entitlement to claim higher pay scale for the post for which he was asked to officiate and perform his duties till his superannuation would not be negated.

15. As the reasoning of the High Court is fundamentally based on enunciation of law propounded by the Court in P. Grover [P. Grover v. State of Haryana, (1983) 4 SCC 291 : 1983 SCC (L&S) 525 : AIR 1983 SC 1060] , we think it apt to appreciate the ratio laid down in the said case. A two-Judge Bench of this Court was dealing with the fact situation wherein keeping in view the policy decision, the appellant therein was promoted as an acting District Education Officer. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant she would continue to draw her salary on



her pay scale prior to promotion. The claim was put forth by the appellant that she was entitled to the pay of District Education Officer and there was no justification for denying the same to her. A writ petition was filed before the High Court and the State filed the counter-affidavit contending, inter alia, that she was promoted to the post of acting District Education Officer as there was no Class I post and hence, she was not entitled to be paid the salary of District Education Officer. Appreciating the fact situation, the Court held : (SCC p. 293, para 3)

“3. ... We are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer, a Class I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt Grover is entitled to be paid the salary of a District Education Officer from the date she was promoted to the post, that is, 19-7-1976, until she retired from service on 31-8-1980.”

18. In A. Francis [A. Francis v. Metropolitan Transport Corpn. Ltd., (2014) 13 SCC 283 : (2015) 1 SCC (L&S) 376], the Court was dealing with the entitlement of the appellant to the salary in higher pay of Assistant Manager wherein he had worked from 28-2-2001 till 31-5-2005. The employer had denied certain benefits and the employee preferred a writ petition before the High Court which was allowed by the learned Single Judge. The Corporation filed letters patent appeal which reversed the judgment of the learned Single Judge. The appellant before this Court placed reliance on Secy.-cum-Chief Engineer v. Hari Om Sharma [Secy.-cum-Chief Engineer v. Hari Om Sharma,



(1998) 5 SCC 87 : 1998 SCC (L&S) 1273] . On behalf of the Corporation terms of the order were pressed into service contending that there were specific conditions stipulated in the order with regard to salary and emoluments and, therefore, the claim with regard to higher post was not tenable in law.

20. In *Hari Om Sharma [Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87 : 1998 SCC (L&S) 1273]*, the respondent was promoted as a Junior Engineer I in 1990 and had been continuing on that post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached the Central Administrative Tribunal which allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I. That apart certain other directions were also issued. The Court took note of the fact that the respondent was promoted on a stop-gap arrangement as Junior Engineer I and opined that this by itself would not deny his claim of salary for the said post. In that context, the Court held : (SCC p. 89, para 6)

“6. ... If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.”

22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in *P. Grover [P. Grover v. State of Haryana, (1983) 4 SCC 291 : 1983 SCC (L&S) 525 : AIR 1983 SC 1060]* and *Hari Om Sharma [Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87 : 1998 SCC (L&S) 1273]* . As far as the authority in *A. Francis [A. Francis v. Metropolitan*



Transport Corpn. Ltd., (2014) 13 SCC 283 : (2015) 1 SCC (L&S) 376] is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma [Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87 : 1998 SCC (L&S) 1273] and resultantly we hold that the view expressed by the High Court is absolutely impeccable....”

73. Perusal of the above extracts reveal that the Hon’ble Supreme Court has settled the issue regarding claim of a person for pay scale attached to a position where he was working in an officiating capacity. In the case of ***Dharam Pal (Supra)***, Dharam Pal was given the officiating charge of higher posts (Superintendent Grade II and Superintendent Grade I) while he was substantively holding the post of Senior Assistant. The Hon’ble Supreme Court held that Dharam Pal was entitled to the pay scale of the higher post he was officiating because he was performing the duties and responsibilities of the said post.

74. It was observed that an employee performing duties of a higher post in an officiating capacity should be paid the higher emoluments for the duration they actually worked in that capacity, applying the principle of *quantum meruit*. The Hon’ble Court held that if an employee is officiating in a higher post and is performing the duties and responsibilities attached to that post, he is entitled to the pay scale of that higher post.

75. Furthermore, as per the principle of legitimate expectation, an employee has a reasonable expectation of being treated in a certain way



by their employer, based on past practices or promises. If an employee has been performing the duties of a higher post for an extended period, they might have a legitimate expectation of being compensated accordingly or being formally appointed to that post.

76. This Court is of the view that the Courts are duty bound to consider the principles of equity and fairness, particularly in employment disputes. If an employee has been performing the duties of a higher post in good faith and upon directions/orders of the concerned authority, it might be deemed unfair for the employer to deny them the corresponding benefits. However, there must be clear and convincing evidence that the employee has been performing the specific duties of the higher post.

77. Now delving into the facts of the matter in hand.

78. The respondent workman claimed his entitlement to the pay scale of Garden Chaudhary w.e.f. 1st April, 1991, i.e., when he was directed/ordered by the Deputy Director (Horticulture) to perform the duties of Chaudhary by way of issuing a list where the workman's name appeared at serial no. 42.

79. It is relevant to note here that the above said list has not been denied or disputed by the petitioner department before the learned Industrial Tribunal as observed in paragraph no. 15 of the impugned award. Relevant paragraph is reproduced herein below:

“...15. The Workman has deposed in his affidavit filed in his evidence that he was working as acting Chaudhary w.e.f 01.01.91 and his name appears at sr.no.42 in Annexure W which is Ex.W1/1. I have perused the said exhibited document. It clearly shows that the employees from sr.no.1 to 43 were working as Officiating Chudharies with the Management. The list clearly show that the persons were



earlier working as Mali who have been working as Chaudhary w.e.f the date mentioned against their names. The perusal of Ex.WW1/1 shows that the name of Workman appears at sr.no.42 i.e. Siroman sb Inderpal, earlier working as Mali, appointed on 01.04.1989, working as Officiating Chaudhary w.e.f. 01.04.1991. This list has been signed by Dy. Director (Horticulture). This document has been issued by Management. It has not been denied by the Management that this document does not belong to then' or that it is a false or procured document. In cross examination, WW1 Workman has deposed that he has been regularly promoted to the post of Garden Chaudhary w.e.f 04.03.2014. He qualified the trade test for the post of Garden Choudhary. The document Ex.WW1/1 clearly indicate that the workman started working as Chaudhary w.e.f. 01.04.199 1 though the passed the required test later and promoted to the post of Chaudhary..."

80. Perusal of the above reproduced extracts of the impugned award reveals that the workman had deposed before the learned Tribunal that he was working as acting Garden Chaudhary w.e.f. 1st April, 1991. Further, it was observed by the learned Tribunal that the list (EX. WW1/1), which was duly signed by the Deputy Director (Horticulture), exhibited by the workman in his affidavit, explicitly states the name of the workman at serial no. 42, who was earlier working as a *Mali* and later on working as Officiating Chaudhary.

81. It was also observed by the learned Tribunal that the document has been issued by the petitioner management and the said list has not been denied by the Assistant Director (Horticulture) who was appearing on behalf of the petitioner department before the learned Tribunal.

82. The above extract of the impugned award also states that in the cross examination, the authorized representative of the petitioner



department explicitly stated that the workman was promoted in the year 2014 after passing the trade test and the learned Tribunal had specifically noted that the petitioner department did not deny the above said list by virtue of which the respondent workman was directed to perform duties of Garden Chaudhary in officiating capacity. For reference, the relevant portion of the cross examination of petitioner department is reproduced herein below:

“..XXXXXX by Sh. BK Prasad, Ld. AR for workman.

It is correct that workman Sh. Siroman Singh has been promoted since 04.03.2014.

At this stage, Ld. AR for workman has drawn attention of the witness on order Ex. WW 1/1 at serial no.42 of judicial file and asked the following questions:-

Q Is it correct that as per this order the present workman alongwith the other workmen has been directed to look after the work as Choudhary. What have you to say?

Ans. I have seen the order but it is not mentioned the office file number nor the Dy. Director Horticulture has power to direct the Mali/Gardener to look after the work of Choudhary.

Q It is correct that this list Ex, WW 1/1 has already been got verified by the Asst. Director Horticulture namely Sh. Narpat Singh. What have you to say?

Ans. It is correct.

Q Is it correct that now a days the Narpat Singh is posted in Shahdara North zone? What have you to say?

Ans. It is correct.

At this stage, Ld. AR for workman has drawn attention of the witness on the list dt. 4.6.13 for payment of discharging the duties of higher post already Ex. WW 1/3 and asked the following questions

Q The abovesaid order was issued by the Director, Horticulture. What have you to say?

Ans It is correct.



Q Is it correct that workman Siroman Singh has joined you on 17.06.09 as a Mali/Gardener on transfer from New Delhi Central Zone Horticulture?

Ans. It is correct.

Q Is it correct that after joining by Siroman in your department, he has been looking after work of Choudhary since 17.06.09. What have you to say?

Ans It is correct.

It is correct that if the rules allow to give the money for the period working as Choudhary by the workman Siromani Singh till he is appearing in the examination conducted by the department for promotion as Choudhary, then he is eligible to get the said amount from the department...”

83. It is observed by this Court that the document (Exhibit WW1/1) signed by the Deputy Director (Horticulture) serves as official acknowledgment that the respondent workman along with the others were performing duties of Garden Chaudhary which is a higher post than that of *Mali* (initial post). The lack of denial or contestation by the management strengthens the credibility of this evidence.

84. This Court is of the view that in terms of the aforesaid list, i.e., Ex. WW1/1 it is proved that the workman was appointed to perform duties of a Garden Chaudhary in officiating capacity by the Deputy Director (Horticulture) of the petitioner department.

85. Thus, in terms of the law discussed in the foregoing paragraphs, the workman cannot be held to be not entitled to the pay scale attached to the post of Garden Chaudhary. The said finding is based upon the fact that the petitioner department has not produced any documentary or oral evidence to deny or disprove that the workman did not perform the duties of Officiating Garden Chaudhary after his name appeared in the list or that he was not appointed on the said post w.e.f. 1st April, 1991.



86. It is important to note that the entitlement of the workman to the pay scale of Garden Chaudhary is also based upon the fact that the respondent was officially promoted to the above said post w.e.f. 4th March, 2014 as well as the legal propositions discussed in the foregoing paragraphs.

87. Thus, various judicial decisions have established that the employees are entitled to the pay scale of higher posts if they are officiating in those posts and performing the associated duties, even if they have not been formally appointed or promoted through the established recruitment process. This ensures fairness and adherence to the principle of 'equal pay for equal work', recognizing the responsibilities and work actually undertaken by the employee.

88. At this stage, it is pertinent to discuss the judgment of the Division Bench of this Court in ***Sultan Singh (Supra)*** against which SLP was filed before the Hon'ble Supreme Court by the petitioner department and the same was dismissed as withdrawn. The relevant portion of the judgment of the Division Bench of this Court is reproduced herein below for reference:

“...12. The Tribunal heard the pleas and contentions of the parties and directed the petitioner to examine the claim of the respondents on the basis of the evidence that is the three lists issued by different zones in respect of respondents working as Garden Chaudharies and other functions and process the payment of difference of pay of the post held and the duties discharged by the respondents relying on Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291 and Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma, 1999 (1) SLJ 23 (SC). The respondent has also relied on W.P(C) No. 5742/2010, GNCT



of Delhi v. B.S. Jarial where the Division Bench had held that when a person is told to discharge the function and duties of a higher post till the same is filled up and he works for years together as in that case the Deputy Superintendent was made to work as Superintendent for more than 7 years, it would be unjust to deny him wages in the said post. The Tribunal categorically noted the plea of the respondents that they are performing the higher duties for long years for want of a regular promotion on officiating basis, and having discharged the duties of higher post by resorting to what is referred by the Tribunal as the 'quantum of proportion rule', held that they are entitled for emoluments of the higher post. The mention of 'quantum of proportion rule' appears to be a typing error. What the Tribunal intended to say was 'quantum meruit rule'.

19. The learned counsel for the petitioner has argued the matter on the premise that the respondents are claiming to be appointed to the post of Garden Chaudharies without having qualifications as contemplated under the recruitment rules. No doubt on account of having worked as Garden Chaudharies on ad hoc basis for a number of years, the respondents may not be entitled to be appointed to the post of Garden Chaudharies contraiy to the recruitment rules, however, perusal of their petition which was filed in the High Court which was later on transferred to the Central Administrative Tribunal whose order is impugned by the petitioner, reveals that what the respondents are demanding is only that the petitioner should pay the difference of wages of Malies/Chowkidars and that of Garden Chaudhary from the date the respondents have been performing the duties and responsibilities of Garden Chaudharies.

22. Apparently the petitioner misconstrued the claim of the respondents who were not seeking promotion to the post of Garden Chaudharies but are only claiming difference in pay of Mali/Chowkidar and Garden Chaudharies as they had been performing the work of Garden Chaudharies after the



Deputy Director Horticulture directed them to perform the said work which was also intimated to headquarter Horticulture without any objection either from the Horticulture department or any other competent authority at any time. This is also not the plea of the petitioner that Headquarter of Horticulture Department and alleged competent authority was not aware of work of Garden Chaudharies being taken from Malies/Chowkidars as sufficient number of posts of Garden Chaudharies were not filled and all the posts according to accepted norms were not created.

23. While seeking the review of order dated 29th January, 2010 it was rather pleaded that the Mali/Chowkidars are not entitled for difference in pay for performing the duties of Garden Chaudharies pursuant to the directions of the Assistant Director (Horticulture) as it was adjudicated in Civil writ petition Nos. 7869/2002, 8679/2005, 13288-91/2005 and 12025/2006. Before this Court the copies of these orders have not been produced by the learned counsel for the petitioner. This is, however, clear that the facts and circumstances in those writ petitions were different as apparently in those cases Assistant Director (Horticulture) had asked the malies/chowkidars to perform the duties of Garden Chaudharies in contradiction to the present case where the Deputy Director (Horticulture) has asked the respondents to perform the duties of Garden Chaudharies and the details of these persons and the dates from which they have been performing was duly intimated to the Horticulture headquarter without any objection of any type either by the Horticulture headquarter or from the petitioner in any manner. If the Deputy Director and other officials had been asking the malies/chowkidars to perform the duties of Garden Chaudharies contrary to any directions or rules, action should have been proposed or taken by the petitioner against them. This is also apparent that the work of Garden Chaudhary has been available as the post of Garden



Chaudharies based on the number of posts of Malies/Chowkidars have not been filled.

24. The Tribunal while dismissing the application for review of the petitioner by order dated 7th October, 2010 has held that the Deputy Director (Horticulture) is the competent authority relying on the decision of the Apex Court in State of West Bengal v. Kamal Sen Gupta(2008) 2 SCC (L&S) 735.

25. The learned counsel for the petitioner has not produced any guidelines, circulars to show that if the work is available and the Garden Chaudharies are not appointed, then who is competent to appoint Malies/Chowkidars on ad hoc basis as Garden Chaudharies and to take from them the work of Garden Chaudharies. If on account of exigencies of the work the head of the department asks Malies/Chowkidars to do the work of Garden Chaudharies which is now admitted by the petitioner in the present writ petition impugning the order of the Tribunal then why the difference of pay of Mali/chowkidar and Garden Chaudhary be not be paid to them, has not been satisfactorily explained by the petitioner. Applying the principle of quantum meruit as was held by the Supreme Court in case of Selvaraj (Supra) the petitioner has to pay to the respondents emoluments available in the higher pay scale during the time they actually worked on the post of Garden Chaudhary in the facts and circumstances. In Selvarai v. Lt. Government of Island, Port Blair, (1998) 4 SCC 291, the employee was not regularly promoted to the post of Secretary (scouts) but he was regularly asked to look after the duties of Secretary (scouts). Applying the principle of quantum meruit it was held by the Supreme Court that the authorities should have paid to the employee the emoluments available in the higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promote. In Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87 the employee was promoted as a stop-gap arrangement as



Junior Engineer I and he had given an undertaking that on the basis of stop-gap arrangement, he would not claim any benefit pertaining to that post. It was held that the Government in its capacity as a model employer cannot be permitted to raise such an argument, and the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872. In W.P(C) No. 5742/2010, decided on 25th August, 2010, GNCT of Delhi v. B.S. Jarial another Division Bench had held that when a person is told to discharge the function and duties of a higher post till the same is filled up and he works for years together as in that case the Deputy Superintendent was made to work as Superintendent for more than 7 years, it would be unjust to deny him wages for the said post. The Division Bench had held that if an employee is directed to work on a higher post he has no option but to work at higher post at the dictate of the employer, as for his not so doing would attract penalty proceedings against him. In Sh. Bhagwan Dassv. State of Haryana, 1987 (3) SLJ 93 it was observed by the Supreme Court that whether the appointment was for temporary period or the scheme was temporary in nature is not relevant and what is to be seen is that once it is established that the nature of duties and functions discharged and the work done in similar, the doctrine of equal pay for equal work would be attracted. The employee in this case had been posted to officiate as Sub Post Master in HSG-I at the post office and he shouldered the higher responsibilities of the department and, therefore, he became entitled for emoluments of the post of HSG-I for those periods and he could not be denied those emoluments.



26. The petitioner has relied on (1997) 6 SCC 200, Mohd. Swaleh v. Union of India and W.P(C) No. 4231/2002 decided on 17th March, 2011 titled MCD v. Sh. Bhanwar Singh In Bhanwar Singh (Supra) the Single Judge of the High Court had set aside an award passed against the Municipal Corporation of Delhi holding that the workman was entitled in future to wages as of a Garden Chaudhary. The workman in the said case had filed a complaint under Section 33 of Industrial Disputes Act, 1947 regarding the terms of his employment having been changed during the tenure of general dispute between the employer MCD and the Chowkidar, Beldar, Bullockmen, Bhishties, Coolies, Machinemen, Hedgemen, Garden Chaudhary etc. employed with it. It was asserted by the workman that term of his employment had been changed by his transfer from Shahdara zone where he was working to the Headquarters (Horticulture Department). In these circumstances the reference was made 'Whether the workman was entitled to wage of Garden Chaudhary for the period 3rd December, 1988. The Tribunal had held that the workman though was not entitled to the relief of regularization on the post of mali with effect from 1st March, 1978, however, he was held entitled to wages equal to regular malies with effect from 1st March, 1978 till the date of his regularization up to 31st March, 1998 without any increment. It was also held that the workman shall be entitled to receive wages of regular Garden Chaudharies in proper pay scale. The learned Single Judge relying on W.P(C) No. 4023/1997 titled Municipal Corporation of Delhi v. Jaedish Chander where it was held that proper procedure has to be followed for promotion to the post of Garden Chaudhary had set aside the award holding that the workman was entitled for emoluments as of mali only as he was asked to work as Garden Chaudhary by the Assistant Director who was not authorized to do so. Apparently the case relied on by the petitioner is distinguishable as the respondents are not claiming regular appointment to the post of Garden Chaudhary. The respondents are claiming difference in wages as they were



directed to perform the work of Garden Chaudharies by the Deputy Director (Horticulture) and the details of respondents who had been directed to work as Garden Chaudharies and the tenure during which they worked as Garden Chaudharies, were sent to the Horticulture headquarter and Municipal Corporation of Delhi without any objection or action on the part of petitioner. In the case of respondents it is also apparent that the work of Garden Chaudharies was available. In the circumstances, on the basis of ratio of Sh. Bhanwan Singh (Supra) it cannot be held that the respondents are not entitled for difference in wages.

27. In Mohd. Swaleh (Supra) it was held by the Supreme Court that a Deputy Registrar of Central Administrative Tribunal who was ordered by the Vice Chairman to discharge the function of the Registrar would not be entitled for emoluments of the Registrar as the Vice Chairman did not have the power to appoint another Government servant, permanently to the said post, as the appointing authority was the President of India. It was held that in absence of any delegation of power in respect of Group 'A' post, Vice Chairman was not empowered to make the appointment of the Registrar. In contradistinction in case of respondents it has been held that the Deputy Director could take the work of Garden Chaudharies from the malies/chowkidars which is Group "D" post workman and this fact was not objected to either by the petitioner at any time nor by the Horticulture headquarter. If the action of the Deputy Director or the headquarter Horticulture was illegal then the petitioner should have taken some action against some of the officials or at least should have objected about taking the work of Garden Chaudharies from malies and chowkidars for years together. In the circumstances, apparently the ratio of the cases relied on by the petitioner would not entitle it for any relief to decline the difference in wages to the respondent during the period they worked as Garden Chaudharies



which is left for determination by the petitioner after consideration of evidence produced by the respondents.

28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un-sustainability or perversity in the orders of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost...”

89. Upon perusal of the above stated judgment, it is observed that the issue before the Division Bench of this Court was to decide regularization and payment of arrears to certain employees of the MCD.

90. Similar to the issues in the present case, the employees in question before the Division Bench were initially appointed to positions like *Mali*



or *Chowkidar* within the MCD. Over time, due to operational needs or administrative decisions, these employees were directed to perform duties that were traditionally assigned to a higher position, such as Garden Chaudhary. This resulted in them performing duties of a higher post without receiving the corresponding pay scale.

91. While deciding the issue, the Division Bench emphasized that the mere fact of performing duties of a higher post does not automatically entitle an employee to regularization. Regularization can only be granted in accordance with the recruitment rules governing such appointments. It must be based on the existence of sanctioned posts, recruitment rules, and the fulfillment of other statutory requirements.

92. The Division Bench also held that the employees who had been directed to perform duties of a higher post, even if on an *ad hoc* or temporary basis, are entitled to receive arrears for the period during which they performed those duties. This decision was based on the principle that if employees are asked to perform work of a higher grade, they should receive remuneration commensurate with the duties performed.

93. The Division Bench applied the principle of ‘equal pay for equal work’ in the said case and held that the employees who were performing duties equivalent to those of regular employees in higher posts should receive pay and benefits equivalent to the pay scale of those higher posts.

94. At this juncture, this Court deems it appropriate to refer to the judgment of the Hon’ble Supreme Court in *State of U.P. v. Arvind*



Kumar Srivastava¹⁰ wherein the Hon'ble Court discussed the principle of extending the benefit of a judgment *in rem*. Relevant paragraphs are as under:

“...8. The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. Whereas the appellants contend that the respondents herein did not approach the court in time and were fence-sitters and, therefore, not entitled to the benefit of the said judgment by approaching the judicial forum belatedly. They also plead some distinguishing features on the basis of which it is contended that the case of the respondents herein is not on a par with the matter which was dealt with by the Tribunal in which order dated 22-6-1987 was passed giving benefit to those candidates who had approached the court at that time. On the other hand, the respondents claim that their case is identical to those who had filed the application before the Tribunal inasmuch as appointments of the respondents were also cancelled by the same order dated 22-6-1987 and, therefore, there is no reason to deny the same treatment which was meted out to the said persons, as denial thereof would amount to invidious discrimination which is anathema to the right of equality enshrined under Article 14 of the Constitution of India.

9. It is of interest to note that both the sides, in support of their respective submissions, have referred to certain judgments and the reading whereof would demonstrate that in certain cases benefit of a particular judicial pronouncement is extended to those who are identically situated on the principle of equality. On the other hand, there is a line of judgments denying such a benefit to the second group which approaches the court afterwards, even

¹⁰ (2015) 1 SCC 347



when the said second group is similarly situated as the persons belonging to the first group. However, there is no conflict between the two sets of cases. In order to find out the principles laid down on the basis of which benefit of the earlier judgment is extended to those coming subsequently and the situations where such benefit is denied, we will have to undertake a journey into these details and lay down clear parameters.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated



persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence...”

95. A bare reading of the above extracts states that the Hon’ble Supreme Court reiterated that a judgment *in rem*, which is a judgment concerning the status of parties or determining the rights of the public or a class of persons, applies to everyone who falls within its scope. Therefore, the benefit of such a judgment extends to all similarly situated individuals, even if they were not parties to the original case.

96. The Hon’ble Supreme Court further specifically emphasized that if a judgment *in rem* grants benefits or rights to a particular class of employees (such as *ad hoc* employees seeking regularization), those benefits or rights should be extended to all similarly situated individuals across the board. This principle ensures that the benefits of judicial decisions are applied universally and fairly, promoting consistency and equality before the law.



97. In essence, *Anand Kumar Srivastava (Supra)* emphasized that judgments *in rem* have broad applicability and their benefits should not be confined only to the parties involved in the specific case but should extend to all who are similarly affected or situated.

98. In terms of the judgment of the Division Bench of this Court in *Sultan Singh (Supra)*, this Court vehemently deprecates the stand taken by the petitioner department that the respondent workman was not possessing requisite qualifications or has not qualified the trade test etc. It is clarified that since the workman was discharging the duties of the post of Garden Chaudhary, as such, the workman is entitled for the pay scale of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as a Chaudhary in an officiating capacity in so far as the question of grant of pay against the said post is concerned.

99. Therefore, extending the observations made by the Division Bench of this Court in *Sultan Singh (Supra)* in terms of the judgment titled *Anand Kumar Srivastava (Supra)*, this Court is of the considered view that although the respondent workman is not entitled to the post of Garden Chaudhary w.e.f. 1st April, 1991 in light of the observations made in issue no. 1, however, he is duly entitled to the pay scale attached to the said post for the period for which he performed the duties of Garden Chaudhary in officiating/*ad hoc* position, as per the order (Ex. WW 1/1) of the Deputy Director (Horticulture). The petitioner department is liable to pay the workman in terms of the prescribed pay scale attached to the post of Garden Chaudhary.

100. Accordingly, issue no. 2 stands decided.



CONCLUSION

101. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that there is no *prima facie* error in the impugned award. There is nothing on record to show that the learned Industrial Tribunal has exceeded or usurped its jurisdiction, or acted illegally or in contravention to any law.

102. Based on the considerations made in the preceding paragraphs, it is held that an individual workman who has been working in an officiating/*ad hoc* position and fulfilling the duties of a higher post, by virtue of an order of the concerned department, is indeed entitled to the pay scale associated with that post.

103. Upon reading the legal precedents, it is apparent that Courts have upheld such claims based on principles of equity, fairness, and the doctrine of *quantum meruit*. Therefore, the legal precedent and principles support the entitlement to the corresponding pay scales under such circumstances.

104. With regard to the facts of the instant case, it is observed by this Court that the learned Tribunal has provided a detailed discussion in the impugned award which is based on the testimony and evidence presented before it. The findings in the impugned award show that the respondent workman is entitled to the pay scale of Garden Chaudhary for the period (w.e.f. 1st April, 1991) for which he performed the duties of Garden Chaudhary as per the order of the Deputy Director (Horticulture).

105. It is held that the petitioner department has failed to make out a case to show that the learned Tribunal has acted in an arbitrary manner or



in contravention to the law. The petitioner department had sufficient opportunity to lead evidence and the same is apparent from the impugned award. Taking note of the same, the learned Tribunal has rightly passed the impugned award.

106. In light of the foregoing discussions of facts and law, the impugned award dated 29th February, 2016 by the learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, New Delhi in case bearing ID no. 25/13 (238/16) is upheld. In view of the same, the writ petition bearing W.P (C) no. 2990/2017 stands dismissed along with the pending applications, if any.

107. With regard to the instant batch, it is noted that the learned Tribunal in the respective writ petitions has given similar findings based upon similar observations wherein, based upon the evidence, examination in chief as well as cross-examination, it was found that the workman's name in the respective petition falls under a list which was issued by the Deputy Director (Horticulture) wherein the workmen were directed to work as Officiating/*ad hoc* Garden Chaudhary.

108. Considering the above observations, it is held that in the instant batch of petitions, the petitioner department has failed to put forth any propositions to make out a case in its favour.

109. In view of the foregoing paragraphs, this Court does not find any merit in the instant batch of petitions and is of the view that there is no illegality in the findings as recorded by the learned Tribunal. Therefore, the impugned award in each of the connected petitions is upheld by this Court.



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110. It is made clear that the above said decision is particularly based on the observations of the learned Tribunal wherein it was noted that the workman's name falls within the list issued by the petitioner department. In case, any of the workman in any of the writ petitions do not fall under the list, the same would imply that the said workman was not directed/authorized to perform the duties of the Garden Chaudhary and in the said instance, the said workman would not be entitled to the pay scale of Garden Chaudhary, as claimed by him.

111. Accordingly, the instant batch of petitions stand dismissed.

112. Pending applications, if any, also stand dismissed.

113. In view of the abovesaid findings, the petitioner department is directed to pay the dues as awarded by the learned Industrial Tribunal to the respective workman within a period of three months.

(CHANDRA DHARI SINGH)
JUDGE

JULY 4, 2024
NA/RYP/AV