



2024:DHC:9408



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

Date of decision: 26th NOVEMBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 565/2018, CRL.M.A. 12110/2018**

MS. MONA WALIA & ANR.Petitioners

Through: Mr. Manav Vohra, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.

Mr. Tushar Sannu, Standing Counsel
with Mr. Priyankar Tiwary and Mr.
Sahaj Karan Singh, Advocates for
DCPCR.

Mr. Tahir Ashraf Siddiqui and Mr.
Kartikey Sahai, Advocates for R-3.

Mr. Manjeet Arya, APP for the State.

Ms. Satya Prabha, CWC-II

SI Chandan, PS V.K. North

+ **CRL.REV.P. 694/2018, CRL.M.A. 29995/2018, CRL.M.A.
19966/2021, CRL.M.A. 13945/2022**

SAMIDA KHATOONPetitioner

Through: Mr. Tahir Ashraf Siddiqui and Mr.
Kartikey Sahai, Advocates.

versus

STATE (NCT) OF DELHI & ORSRespondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.

Mr. Tushar Sannu, Standing Counsel
with Mr. Priyankar Tiwary and Mr.
Sahaj Karan Singh, Advocates for



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DCPCR.

Mr. Manjeet Arya, APP for the State.
Mr. Manav Vohra, Advocate for R-3
and 4.

Ms. Satya Prabha, CWC-II
SI Chandan, PS V.K. North

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. CRL.REV.P. 565/2018 has been filed by the Petitioners challenging the Order dated 16.03.2018 passed by the Ld. ASJ/Special Judge, CBI-02, Patiala House Courts, New Delhi in Criminal Appeal No.21/2018 whereby the Ld. ASJ has disposed of the appeal filed by the Petitioners upholding the right of the Child Welfare Committee (CWC) to pass Orders awarding compensation to a Juvenile who was made to work but has reduced the compensation awarded to the Juvenile (*hereinafter referred to as "Child - J"*) by the CWC *vide* Order dated 01.12.2017 from Rs.5,24,116/- to the extent of Rs.4000/- per month from October, 2013 till October, 2017 and in addition to that a further sum of Rs.25,000/- as loss of childhood of the Juvenile i.e., Rs.2,21,000/- in total.
2. CRL.REV.P. 694/2018 has been filed by the Petitioner, who is the mother of the Child - J, challenging the Order dated 16.03.2018 passed by the Ld. ASJ/Special Judge, CBI-02, Patiala House Courts, New Delhi in Criminal Appeal No.21/2018 and seeking restoration of the amount awarded by the CWC *vide* its Order dated 01.12.2017.
3. As per the case of the CWC which has been supported by Respondent No.3, who is the mother of the Child - J, in CRL.REV.P. 565/2018 and the



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Petitioner in CRL.REV.P. 694/2018, the Respondent No.3 was working at the residence of the Petitioners in CRL.REV.P. 565/2018. It is stated by the Petitioners that the Respondent No.3 took their permission to get her daughter (Child - J) with her as the Respondent No.3 was concerned about Child - J's safety which was permitted in the year 2017. It is stated that the Officers of the CWC on information being received had visited the house of the Petitioners and they saw Child - J working in the house of the Petitioners and they took away Child - J from there. The statement of Respondent No.3 was recorded by CWC wherein it is stated by Respondent No.3 that she was working in the house of the Petitioners for the last four years i.e., from 2013 to 2017 and her daughter (Child - J) was also working with her. It is stated by Respondent No.3 that the Child - J used to take care of the child of Petitioner No.2, who was three years old, and used to go to park to play along with the child of Petitioner No.2, change his clothes, lay table for the Petitioners. It is stated that the Child - J used to stay at the house of the Petitioners from 07:00 AM to 08:00 PM and she was not given any salary for the work done and only Respondent No.3 used to get salary from the Petitioners. On the said statement of Respondent No.3, an FIR No.644/2017 dated 01.11.2017 was registered at Police Station Vasant Kunj North for offences punishable under Sections 75 and 76 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

4. Material on record indicates that the Investigating Officer verified the date of birth of the Child - J and collected the certificate from Principal, Government School, Katra, Mujaffarpur and as per the certificate the date of birth of the Child - J is 15.04.2004. In the Aadhar Card produced by Respondent No.3, the date of birth of the Child - J is 01.01.2008. The



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statement of Child - J was also recorded by CWC. In her statement, the Child - J stated that she came to Delhi and she had stayed at her residence for some time. In her statement, the Child - J stated that her mother (Respondent No.3) started working at various houses for cleaning utensils. It is stated that after some time her mother got the Child - J employed in the house of the Petitioners because some children were being kidnapped in the locality by strangers at that time. It is stated that her mother was only working in the house of the Petitioners and used to get Rs.4,000/- per month. It is stated by the Child - J that she was staying at the house of the Petitioners and she used to play with the child of Petitioner No.2 and there was a small dog as well. It is stated by the Child - J that when the child of the Petitioner No.2 used to return from school she used to take out the tiffin box from the school bag of the child and she also used to ask for tea and water to the guests. It is stated that she also used to play ludo when the child would sleep. It is stated by the Child - J that her mother used to do work of sweeping and mopping in the house of the Petitioners. It is categorically stated by the Child - J that she has never done household chores like mopping, dusting, cleaning the floor, washing utensils and cutting vegetables in the house of the Petitioners. It is stated that she was being given food in the morning and in the afternoon in the house of the Petitioners and after that her mother would prepare food for dinner at their residence.

5. The CWC *vide* its Order dated 01.12.2017 held that the Child - J had been working at the residence of the Petitioners for four years. The CWC stated that the Division Bench of this Court in Bachpan Bachao & Ors. vs. Union of India & Ors, 2010 SCC OnLine Del 4613 has empowered the



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CWC to calculate wages which is to be paid to a juvenile, who has been made to work, and, therefore, the CWC has directed the Petitioners to pay a sum of Rs.5,24,116/- to the Child – J for the work done by her as wages from October 2013 to October, 2017, as calculated in the following manner:

S. No.	Month and Year	Minimum Wage (Rs.)	Months	Amount (Rs.)
1.	October 2013 to March 2014	8086	6	48,516
2.	April to Sept 2014	8554	6	51,324
3.	October 2014 to March 2015	8632	6	51,792
4.	April to September 2015	9048	6	54,288
5.	October 2015 to March 2016	9178	6	55,068
6.	April to September 2016	9658	6	57,948
7.	October 2016 to February 2017	9724	6	48,620
8.	March to October 2017	13320	8	1,06,560
A	Total			4,74,116
B	Loss of childhood and atrocities on the child by the employers			50,000
C	Wages to be paid by employers (A+B)			5,24,116.00

6. The aforesaid Order dated 01.12.2017 passed by the CWC was challenged by the Petitioners by filing an appeal under Section 101 of the Juvenile Justice Act before the Appellate Court. Before the Appellate Court, a specific contention was taken by the Petitioners that CWC does not have the jurisdiction to pass any Order directing payment of wages. It was also stated by the Petitioners that the Child - J was not working and she was only accompanying her mother to the house of the Petitioners.

7. The Ld. Appellate Court vide Order dated 16.03.2018 came to the conclusion that the Child - J was not doing any work in the house of the Petitioners and she was only taking care of the child of Petitioner No.2



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herein. The Appellate Court was of the opinion that since mother of Child - J was only getting salary of Rs.4,000/- per month, the CWC has committed an error in assessing wages of Child - J as Rs.8,000/- per month which is more than the amount which even the mother of the Child - J was getting per month. The Ld. Appellate Court also came to the conclusion that there is no evidence to suggest that the Child - J was any point of time beaten and, therefore, no ground is made out to impose Rs.50,000/- as loss of childhood and atrocities and, therefore, Ld. Appellate Court reduced the said amount from Rs.50,000/- to Rs.25,000/-. The Ld. Appellate Court has directed the Petitioners to pay wages to the Child - J @ Rs.4000/- per month from October, 2013 till October, 2017 and in addition to that a further sum of Rs.25,000/- as loss of childhood of the Juvenile i.e., Rs.2,21,000/- in total.

8. It is this Order dated 16.03.2018 passed by the Ld. Appellate Court which is under challenge in the present petitions.

9. Respondent No.3, who is the mother of the Child - J, has also filed an independent petition being CRL.REV.P. 694/2018 challenging the portion of the Order dated 16.03.2018 passed by the Ld. Appellate Court reducing the amount awarded to Child - J as wages and seeking restoration of the amount awarded by the CWC *vide* its Order dated 01.12.2017.

10. Learned Counsel appearing for the Petitioner strenuously contends that the CWC does not have jurisdiction to pass any Orders directing Petitioners for payment of wages to the Child - J. He states that the Order passed by the CWC is contrary to the Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as "JJ Act"*). He states that the stand of the CWC that decision has been taken by the CWC on the basis of Judgment passed by a Division Bench of this Court in Bachpan Bachao



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(supra) giving them power to calculate payment of wages cannot be sustained as it is contrary to the provisions of JJ Act. He further states that the Judgment passed by this Court in Bachpan Bachao (supra) applies only to private placement agencies that provide services of domestic workers and the same does apply to such domestic workers who have not been employed through private placement agencies.

11. Learned Counsel appearing for Respondent No.3 strenuously contends that the Child - J had been working without wages at the house of the Petitioners from October, 2013 till October, 2017. He states that the Petitioners forced Respondent No.3 to bring the Child - J at the residence to take care of the child of Petitioner No.2. He states that the Ld. Appellate Court ought not to have reduced the amount awarded by the CWC vide its Order dated 01.12.2017 as the Child - J is entitled to minimum wages. He states that the Judgment passed by the Division Bench of this Court in Bachpan Bachao (supra) has empowered the CWC to direct payment of wages, compensation and to impose fines on the employer if a child is found to be employed.

12. Learned Counsel appearing for CWC states that the Child - J was rescued from the house of the Petitioners. He states that the Child - J was made to work in the house of the Petitioners and, therefore, the Order of CWC ought not to have been disturbed by the Ld. Appellate Court vide the Impugned Order dated 16.03.2018.

13. Heard the learned Counsel appearing for the Parties, perused the material on record and the statement of Respondent No.3 and the Child - J.

14. A perusal of the statement of the Child - J reveals that Respondent No.3/mother was scared to leave the child at her home and, therefore, she



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brought the Child - J to the residence of the Petitioners because the Respondent No.3 was working full time there. The statements of Respondent No.3 and the Child – J do not indicate that the Child - J was made to do any household chores like mopping, dusting, cleaning the floor washing utensils and cutting vegetables in the house of the Petitioners. The Child - J was primarily looking after the child of Petitioner No.2 (nephew of Petitioner No.1). The Child - J used to play with the child of Petitioner No.2 and accompany the child to the park and play there. It cannot be even said that the Child - J was assisting her mother in household chores.

15. The short question which, therefore, arises for consideration before this Court is whether in this background can it be said that the Child - J has been subjected to any abusive working conditions beyond her physical capacity or that the Child - J was being harassed by the Petitioners or that the Child - J has been subjected to long hours of work without there being any basic facilities like food, shelter etc.

16. The Division Bench of this Court in Bachpan Bachao (supra) was primarily dealing with a Public Interest Litigation highlighting the problems of child trafficking. In that case, the juveniles were working as domestic servants in various houses from time to time to earn minimum livelihood for themselves and their family. Paragraph Nos.2, 3 and 4 of the said Judgment reads as under:

“2. Kalpana Pandit is the petitioner in this case whose daughter is espoused by social activist/Advocate, Ms. Aparna Bhat. The petitioner is a domestic servant (illiterate lady), driven by poverty, working as domestic servant in various houses from time to time to earn the minimum livelihood for her family and sustaining the family for fulfilling the daily



needs. Her family has roots in West Bengal. However, due to acute poverty and incapable to get any employment, she came to Delhi sometime in 1995-96, i.e. five to six years ago before filing this writ petition. The respondent No. 4, viz., Sahyog Placement Sanstha is a placement agency, which makes arrangements for providing domestic helps to the residents of this city. Sometime in March, 1999, the petitioner handed over her daughter to this Sanstha, whose sole proprietor is Sunita Sen, for placement of her daughter as domestic help in some residence. The reason was that the petitioner had fallen serious sick for a long duration, which compelled her to stay at home, as she was not able to work because of the said sickness. Family, in any case, needed sustenance as there was nobody else to support the family financially, no alternative was left to the petitioner to compel her daughter Jharna to take up work.

3. Jharna started working as domestic help at the residence of respondent No. 4. She believed that her daughter would be safe and secure with Sunita Sen. According to the petitioner, she did not know that Sunia Sen, who is one of placement agent would place Jharna as domestic help in other people's houses.

*4. It is averred in the petition that in April 1999 when the petitioner recovered from her illness, she went to the house of Sunita Sen to meet her daughter and then only she came to know that Jharna was working as housemaid at the residence of some Mr. & Mrs. Kaul in Noida, Uttar Pradesh. **She was shocked and surprised as no prior consent of the petitioner was obtained before taking such a step and she was not even informed about this. The petitioner pleads that with great difficulty, she managed to get the phone number of her daughter's employer and tried to contact her daughter, Jharna on that phone. However, she was not permitted to talk with Jharna.***



The petitioner was disturbed and tensed at the sudden disappearance of her daughter, but could not be able to comprehend whom to approach for the help. She went to the respondent No. 4 again and respondent No. 4 had arranged the petitioner to talk with her daughter Jharna on telephone. However, she had no idea where the respondent No. 4 had called. She was concerned and worried about the safety of her growing daughter and wanted to meet her on the occasion of Raksha Bandhan. She along with her son went to the Noida house, the address whereof was provided to the petitioner on phone. However, she could not be able to meet her daughter there. She made repeated attempts for this purpose by visiting Noida again and again, but didn't succeed. Her continues requests made to respondent No. 4 also did not yield any results. She even tried to approach Mehrauli Police Station, but was not provided with any help or guidance there as well. While she was reconciling with the tragedy that had struck her, after a lapse of one and a half years or so, she was informed that her daughter Jharna was missing since 29.08.2000 and the missing complaint had been lodged by Jharna's employer on 06.09.2000 to enquire about her daughter. The petitioner was shocked to hear this and got in touch with the respondent No. 4. The respondent No. 4 even refused to hand over the copy of the alleged missing complaint. In these circumstances, the petitioner had no other option left but to approach the police station and to seek help to trace her daughter. She lodged an FIR in the Vasant Kunj Police Station on 02.02.2001 under Section 363 of Penal Code, 1860. That was registered as FIR No. 50 of 2001. However, according to her, no concrete steps were taken to investigate the allegation mentioned in the FIR. The petitioner, viz., had approached the Juvenile Welfare Board (JWB) and filed a case. The JWB acted promptly on the petitioner's complaint and summoned the



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respondent No. 4 to attend the hearings but they did not consider it as important enough to attend the hearing and give the information they had regarding the whereabouts of the petitioner's daughter. However, case did not progress much due to non-appearance of the respondent No. 4. The JWB had at last addressed a letter to the Deputy Commissioner of Police, Crime Branch on 27.08.2001 and requested for a thorough investigation into the incident, but no headway was made. She waited for quite some time, as she was in dark about the whereabouts of her daughter, Jharna. On 23.05.2002, she filed the instant petition in the nature of habeas corpus seeking direction against the respondent No. 4 to produce the petitioner's daughter, Jharna forthwith. The State of NCT Delhi is impleaded in petition as the respondent No. 1, the Commissioner of Police as respondent No. 2, S.H.O., Vasant Kunj Police Station as respondent No. 3, Sahyog Placement Sanstha (owned by Ms. Sunita Sen) as respondent No. 4 and Juvenile Welfare Board was impleaded as respondent No. 5.” (emphasis supplied)

17. A perusal of the aforesaid shows that the placement agencies were exploiting the children by engaging them as domestic helps. The Division Bench was, therefore, concerned only with the exploitation of children by the placement agencies. The Division Bench was also dealing with the problem of minors being kidnapped and trafficked from various states and brought to Delhi and sold for the purposes of prostitution, begging, drug peddling, slavery, forced labour, including bondage, and for various other crimes and who are still stranded in various parts of Delhi against their wishes and are waiting to be rescued. Various directions were passed by the Division Bench of this Court to assuage these problems. The present case is not one of such cases. In the present case, the Respondent No.3/Mother, who



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did not want her Child – J to be left at home alone as Respondent No.3 was scared that her Child – J would be kidnapped, brought the Child – J to the house of the Petitioners on her own with the permission of the Petitioners. The Child – J was not employed at all but was brought to the house of the Petitioners by her Mother/Respondent No.3 herself for the safety of the Child – J itself. The Division Bench of this Court in the said Judgment passed directions regarding regulation of placement agencies and also passed directions regarding such cases where children are being made to work as manual labour.

18. Similarly, the Order dated 25.09.2014 passed by the Labour Department, Government of NCT of Delhi also primarily deals with domestic workers who are employed through a private placement agency and has exploited by a private placement agency.

19. This Court is, therefore, unable to accept the argument of the CWC that they rescued the Child – J from the house of the Petitioners more so because it was the mother of the Child – J who had brought the Child – J a the residence of the Petitioners for her safety. It has been categorically stated by the Child – J in her statement that she was not doing any household chores like mopping, dusting, cleaning the floor, washing utensils and cutting vegetables in the house of the Petitioners.

20. This Court is, therefore, not in a position to entertain the petition being CRL.REV.P. 694/2018 filed by the mother (Respondent No.3 in CRL.REV.P. 565/2018) of the Child – J seeking restoration of the amount awarded by the CWC *vide* its Order dated 01.12.2017.

21. Undoubtedly, the Child – J was doing some work to attend the child of Petitioner No.2 and for that she was not paid anything which she ought to



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have been paid. The Petitioners also could have ensured that the Child – J should be admitted in a school for her development and betterment which could be said to be a pious obligation on the part of the Petitioners.

22. In view of the above, this Court is of the opinion that Order dated 16.03.2018 passed by the Ld. ASJ/Special Judge, CBI-02, Patiala House Courts, New Delhi directing payment of Rs.4000/- per month from October, 2013 till October, 2017 and in addition to that a further sum of Rs.25,000/- as loss of childhood to Child - J i.e., Rs.2,21,000/- in total for the work done by her does not require any interference from this Court.

23. Resultantly, both the petitions being CRL.REV.P. 565/2018 and CRL.REV.P. 694/2018 stand dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 26, 2024

S. Zakir