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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 503/2019, CM APPL. 48675/2019 (for impleadment), CM APPL. 60572/2024 (Ex. from depositing amount), CM APPL. 60575/2024 (for disposal of this case)

MUNICIPAL CORPORATION OF DELHIAppellant

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

versus

RAJPAL & ORSRespondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER

% **17.02.2025**

1. The present Letters Patent Appeal seeks to question the correctness of the judgment handed down by the learned Single Judge on 09 October 2018 dismissing a writ petition preferred by the appellant before us and in terms of which they had sought to assail the validity of an Award dated 11 January 2010 handed down by the **Industrial Tribunal¹**.

2. The Tribunal had in terms of that Award answered the reference in favour of the respondent-workmen and had essentially held that the chowkidars employed with the appellants would be entitled to parity in pay with security guards.

3. From the facts which have come to be noticed by the learned Single Judge, we find that the reference stood confined to the issue of

¹ Tribunal



whether the workmen were performing the same duty of watch and ward as was being undertaken by security guards working in the Health Department of the appellant. The second incidental question which was referred for the consideration of the Tribunal was if the answer to the above be in the affirmative, whether the chowkidars would be entitled to consequential benefits of being granted the pay scale of INR 2610-4000.

4. The Tribunal proceeded to answer the issues which were framed in favour of the respondent-workmen. However, and before the learned Single Judge, the appellants had clearly averred and asserted that the reliance which was placed by the workmen on the decision of the Court in **Ram Kishen v. Municipal Corporation of Delhi**² was clearly misplaced. According to them the posts of gunmen/security guards and chowkidars were different and distinct. Security guards and gunmen, it was averred, were posted at sensitive sites whereas chowkidars were posted in parks and other similar locations. It was also asserted that the chowkidars were transferred from the **Delhi Development Authority**³ and thus granted the pay scale that they would have been drawn by them if they had continued with the DDA. It was also significantly submitted that they had no experience as ex-servicemen.

5. Of crucial significance was the following submission which appears to have been addressed before the learned Single Judge:

“(vi) As per the applicable Recruitment Rules, the essential qualification, for recruitment as Security Guard/Gunman, in the MCD, was a middle school pass, along with experience as Lance Naik in the Army or equivalent rank in the Defence Forces. He was also required to be an ex-serviceman and sponsored by the DDR Board of ex-servicemen Employment Exchange. 15% of the persons

² 2006:DHC:2265

³ DDA



recruited were from paramilitary forces. As against this, no academic qualification was prescribed for the post of Chowkidar. The petitioners had initially been engaged as Chowkidars on muster roll basis and were later regularised. They could not claim parity with Security Guards/Gunmen.”

6. However, the learned Single Judge has essentially following the judgment in *Ram Kishen* held as under:

“8.1 Between the judgments of the learned Single Judge, and of the Division Bench in *Ram Kishen (supra)*, it may justifiably be said that all the dynamics of the "equal pay for .equal work" concept stand exhaustively thrashed out, in circumstances which clearly parallel those in the present case. The workmen-petitioners, in *Ram Kishen (supra)*, too, were designated, as Chowkidars/Gunmen, and were appointed consequent to the requisitioning, by the MCD, of names, from the Employment Exchange, for the post of Security Guards/Gunmen. They were deployed in the health wing of the MCD. There was, admittedly, interchangeability of postings. The security personnel and the Chowkidars were doing the same work. As in the present case, the contention, of the MCD, before this Court, was that the two categories of employees were posted at different places, i.e. in different departments. This Court based its decision, to direct parity of pay, on the fact that (i) both categories of employees were under the same employer, (ii) they performed similar duties, (iii) they were recruited through a constitutionally sanctioned process and (iv) their duties were interchangeable. It was noted that no attempt was made to demonstrate how the duties performed by the two categories of employees were different, or to establish that security personnel had superior training, or achievements, as compared to Chowkidars. This Court noted that the essential function, of both kinds of employees, was to protect and secure the assets of the MCD. The legal position was tellingly summed up, in para 20 of *Roop Chand Adlakha v. Delhi Development Authority, AIR 1989 SC 307*, which as reproduced and relied upon by the learned Single Judge in *Ram Kishen (supra)*. The said para merits reproduction, once again, thus:

"20. "To overdo classification is to undo equality." The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves the rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify; The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective, of the relevance or nexus to objects sought to be achieved by the law imposing the classification."



Following this, the learned Single Judge held in para 11 of **Ram Kishen (supra)**, as under:

"11. The attempts of MCD to justify the differential treatment, and the classification, exemplify precisely the over-classification which renders the guarantee of equality into a chimera, a "mere rope of sand". Besides the classification itself, there is no rationale offered. I am of the view therefore, that the petitioners are entitled to the doctrine of equal pay for equal work."

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8.3 Once the very same posts, which constitute subject matter of dispute in the present case, have already been examined by this Court, in the above decisions, involving the same dispute as assails the present proceedings, it becomes entirely unnecessary to cogitate, to any appreciable extent, on the pronouncements on which Ms. Biji Rajesh has sought to place reliance, which lay down the parameters of the principle of "equal pay for equal work" in general, and to which, quite obviously, there can be no exception. These principles have, however, in fact been applied, by this Court, in **Ram Kishen (supra)**, to Chowkidars and Security. Guards/Gunmen in the MCD, and a reasoned decision, to direct parity of pay between these categories of workmen, has been taken, and implemented by the MCD.

8.4 The distinction, which was sought to be drawn, by learned Counsel for the petitioner, between the workmen who were subject matter of **Ram Kishen (supra)**, and the present respondents, on the ground that the former happened to be ex-servicemen, has, in my view, no legs to stand on. It is trite and well-settled, in law, that, once persons from different streams of different modes of recruitment, are recruited to a post, their birthmarks stand effaced, and they are entitled to equal treatment before the law, for all purposes, be it pay or further career advancement. In the context of persons recruited to a post by direct recruitment and promotion, dealing with the question of whether disparity in pay, based on the mode of recruitment, was permissible, the Supreme Court held thus, in **Kamlakar v. U.O.L, (1999) 4 SCC 756**:

"We have considered the limited issue. We are of the view that all these appellants should get the same relief as the appellants in the civil appeal which arose out of Special Leave Petition No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotes disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given is concerned. The birthmarks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale — which were matters



common to all of them before the impugned order of the Government of India was passed on 2-7-1990, — then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondents' contention."

(Emphasis supplied)"

7. As is manifest from the above, the backdrop of the impugned judgment was the decision of our Court in *Ram Kishen* and which had based the grant of relief on the principle of equal pay for equal work.

8. However, and for our benefit, the appellant has cited the subsequent judgment of the Supreme Court in **North Delhi Municipal Corporation [‘NDMC’] v. Jawahar Singh & Ors.**⁴ and where too the question of parity in pay between chowkidars and security guards arose for consideration. In the course of consideration of that appeal, the NDMC is stated to have referred to the relevant recruitment rules for chowkidars and which is noticed in paragraph 6 of the decision of the Supreme Court as follows:

“6. Learned counsel for the appellant-Corporation has referred to the recruitment rules for chowkidars, which lay down the educational and other qualifications required for appointment to the said post, as follows:

SCHEDULE

Recruitment Regulations for the posts of Chowkidars

1. Name of the post	Chowkidar
2. No. of posts	500
3. Classification	Class-IV
4. Scale	Rs.70-I-80-BB-I-8
5. Whether selection post or non-selection post	Not applicable
6. Age limit for direct recruits	30 Years (Relaxable for ex-servicemen)
7. Educational and other qualification required for direct recruits	Essential: Should be able to read and write. Desirable: Middle standard pass”

⁴ SLP(C) 32985/2018 dated 05 December 2023



9. The Supreme Court's attention was also drawn to the eligibility criteria and educational qualifications that were distinctively provided for gunmen/security guards. Those qualifications stand detailed in paragraph 7 of the report and which is extracted hereunder:

“7. Insofar as the post of Gunmen/Security Guards is concerned, the educational and other qualifications required for appointment to the said post is as follows:

Rrs for the Post of Security Guard/Gunmen (Health
Department)

Municipal Corporation of Delhi

1. Name of the post	Security Guard/Gunmen
2. No. of posts	136 (as on 31-5-98) subject to variation depending on work load.
3. Classification	Category 'D'
4. Scale	Rs.2610-60-3150 (5th Pay Commission)
5. Whether selection post or non-selection post	Selection
6. Age limit for direct recruits	Not exceeding 45 years (since requirement is confined to ex-servicemen only)
7. Educational and other qualification required for direct recruits	Essential: (i) Middle school standard pass of a recognized Board or equivalent. (ii) Should be Lance Naik or Naik of Army or other equiv. Rank of Defence Forces.”

10. It was on the aforesaid basis that the Supreme Court ultimately came to observe as under:

“8. It is clear from the above that for appointment to the post of Security Guards/Gunmen, a candidate is essentially required to pass middle school from a recognized Board or equivalent and besides the same, he ought to have been a Lance Naik or Naik in the Army or other equivalent rank in the Defence Forces. It is therefore apparent that appointment to the post of both, Security Guards/Gunmen and chowkidars is by direct recruitment. But the educational qualifications for a chowkidar have been scaled down.



9. In the instant case, none of the respondents were holding the post of Lance Naik or Naik in the Army or other equivalent rank of Defence Forces to claim parity in pay scale with Security Guards/Gunmen. Recruitment Rules in respect of both the posts are different, the essential qualifications are also different. Therefore, the respondents cannot claim that they are similarly placed as Security Guards/Gunmen working in the appellant-Corporation to plead equivalence in the pay scale."

11. It is thus evident that since the essential qualifications which were prescribed for security guards/gunmen were distinct and different from those which were ascribed for the post of chowkidar, the claim for equal pay for equal work could not have been sustained. We bear in mind the indubitable position in law that educational qualifications can constitute a valid basis for a differential pay scale being provided. The distinction in pay scales based on essential and educational qualifications as well as experience which is required cannot be said to be violative of Articles 14 or 16 of the Constitution.

12. In any case, the decision of a Supreme Court in *Jawahar Singh* which was rendered with respect to the NDMC itself would clearly bind and thus be viewed as having impliedly overruled the view which was expressed by this Court in *Ram Kishen*. For all the aforesaid reasons, we find ourselves unable to uphold the judgment rendered by the learned Single Judge.

13. We, consequently, allow the instant appeal and set aside the judgment and order dated 09 October 2018. The writ petition shall, in consequence also stand allowed and the Award of the Tribunal would stand set aside.

14. We, however and in order to balance the equities and the admitted position of the judgment of the learned Single Judge having held the field modify the final relief in the following terms. We thus provide that while the appellant shall stand restrained from recovering



any excess payments that may have been released or paid pursuant to the judgment rendered by the learned Single Judge, it will be the present decision that will govern the grant, formulation and computation of supernumerary or retirement benefits that may be claimed by the respondents.

15. We thus leave it open to the appellants to undertake the requisite exercise of computation in light of our judgment rendered on this appeal.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J
FEBRUARY 17, 2025/RW