

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT DELHI - 1
ROOM NO.207, ROUSE AVENUE COURT COMPLEX,
NEW DELHI.**

**Present: Justice Vikas Kunvar Srivastava (Retd.)
(Presiding officer)
CGIT, Delhi-1**

(In ID. No.131/2018)

Sh. Abid Raza Zaidi S/o Late Zafar Ahmed Zaidi
Through
The General Secretary,
MCD General Mazdoor Union
Room No. 95, Barrack No.1/10,
Jam Nagar House,
Shahjahan Road, New Delhi
New Delhi-110001

Claimant (Workman)

Versus

East Delhi Municipal Corporation
Through its Commissioner,
Udhyog Sadan,
Plot No. 419, Patparganj Industrial Area,
Delhi-110092

Management (Opposite party)...

Shri B.K. Prasad, A/R for the claimant (Applicant).
Shri Anil Mishra, A/R for the management (Opposite party).

Award

1. The Central Government vide its letter No. L-42011/178/2017-ID (DU) Dated 22/02/2018 opined that an Industrial Dispute exists between the employer and their workman and referred the said dispute for adjudication to the Central Government Industrial Tribunal Cum Labour Court Delhi -1, (which shall herein after be called is the Tribunal only) exercising the powers conferred by clause (D) of subsection (1) and subsection (2A) of section 10 of the Industrial Dispute Act, 1947 (which shall herein after be called as 'The ID Act' only).

The reference is, *“Whether Sh. Abid Raza Zaidi was allotted the duty of chaudhary by the management w.e.f 01.01.1990 till his retirement i.e. 31.07.2015? If yes, whether Sh. Abid Raza Zaidi in entitled to the wages of Chaudhary w.e.f 01.01.1990 revised from time to time?”*

Receiving the said reference, Tribunal ordered to register the same as Industrial Dispute Case pursuant to which the present I.D.Case No. 131/2018, titled as Sh. Abid Raza Zaidi through The General Secretary, M.C.D General Mazdoor Union V. East Delhi Municipal Corporation through its commissioner was placed before the tribunal on 27.03.2018. The claimant workman filed the statement of claim and made his appearance through his authorized representative Sh. B.K. Prasad. Notice issued to the opposite party fixing 22.05.2018 for filing of written statement. On 22.05.2018, very promptly the opposite party East Delhi Municipal Corporation put its appearance before the Tribunal through Sh. 'Rajesh' the dealing officer and filed the written statement. Consequently, 11.06.2018 was fixed to file rejoinder by the claimant and also for framing of the issues.

2. The facts of the Industrial Dispute as emerges out from the statement of claim and the written statement in defence as well as the material produced before and taken on record by the tribunal are being briefly stated that the claimant initially appointed on the post of 'Mali' on 01.04.1988. It's alleged by the claimant but denied by the opposite party that he was performing duties of "acting chaudhary" w.e.f. 01.01.1990 till the date of his retirement i.e. 31.07.2015; under the order of competent officer of Horticulture Department of the opposite party. Allegedly in proof of his performing the duties of Chaudhary Since 01.01.1990 the claimant placed in evidence Annexure A photo copy of a list of the malis, wherein the name of the claimant appearing at serial no. 2 as one of them who were looking after the work of Chaudhary w.e.f. 01.11.1990. The claimant as witness has produced himself to prove the Annexure 'A' before the tribunal. In oral examination, an identity card allegedly issued by the department as well the list Annexure A and a no dues certificate issued to him after his retirement on vacating the official quarter stating him Garden Chaudhary is placed in evidence. The claimant asserts himself entitled to the wages of Chaudhary in the pay scale of Rs. 3050-4590 w.e.f. 01.10.1990 upto the date of his retirement on 31.07.2015.

3. Against the case of the claimant the opposite party pleaded that the post of Garden Chaudhary is promotion post to be filled up by selection through Trade Test Conducted by the department from time to time amongst the 'Malis' having required qualification of High School with 'Agriculture' subject. The claimant who was initially appointed as Mali and regularized on 01.04.1988 as Mali, had no eligibly required for Garden Chadhary of High School with Agriculture subject. He had also not appeared in Trade Test conducted by the department and has never

been entrusted with given duties of Garden Chaudhary by the competent officer of the department. The management opposite party has also taken preliminary objection as to the maintainability of the claim statement on the ground that he alleges him working as Garden Chaudhary since 01.01.1990 but raised the claim after his retirement in the year 2017 with a lapse of considerable long time of more than 24 years. The management had firmly denied the claim of the workman to have performed the duties of Garden Chaudhary at any point of time w.e.f 01.11.1990 till the date of his retirement on 31.07.2015, under the order of any competent officer of the management. It is also denied that the management has adopted the unfair labour practice in the matter of the workmen.

- The claimant has anchored his case of working and discharging the duties of a higher post than the post of Mali (where upon he initially had appointment and regularized) i.e. the post of Garden Chaudhary from 01.01.1990 till the date of his retirement 31.07.2015. He has pleaded to this effect the facts and evidence in Para '6' of the statement of claim, which is reproduced below:

Para 6:- *That copy of the work issued to the workman in which his name is appearing at Sl. No. 2 in which the date of looking after the work of Chaudhary is mentioned as 1990 which proves that Abid Raza Zaidi was working as Acting Chaudhary w.e.f. 01.01.1990 so he is entitled to get the payment of Chaudhary from the said date. Copy of the said work order admitted by the Officer of the management in **Ram Kishan S/o Late Likhi Ram** is annexed herewith and marked as **Annexure - A** which proves that the workman has been performing his duty as Garden Chaudhary w.e.f 01.10.1990 so he is entitled the wages of Chaudhary in the pay scale of Rs.3050-4590/- up to the date*

of his retirement i.e. 31.07.2015 revised from time to time alongwith all consequential benefits.

- The annexure 'A' to the claim statement is the only evidence of the claimant workman's working on higher post of Garden Chaudhary as pleaded above in Para 6 and the same is said to be the copy of work order which is admitted by the officer of the management **Ram Kishan S/o Late Likhi Ram** which proves the claimant's working as such from 01.01.1990 to the date of his retirement on 31.07.2015. No other document in support of this pleaded fact than the Annexure A is produced and proved in his evidence before the tribunal.

- It is not pleaded in the statement of claim of the claimant whether he had moved any representation before the competent authoring of the East Delhi Municipal Corporation with regard to the alleged inaction on their part as not paying the wages of Garden Chaudhary at any point of time when he was allegedly discharging the duties of the higher post of Garden Chaudhary in the period commencing from 01.01.1990 till the date of his retirement on 31.07.2015.

- It is worth to be gathered from the document captioned as 'Report of failure of conciliation' marked as Annexure 'B' to the statement of claim, that the claimant (workman) has referred through union a dispute as to the inaction on the part of management of East Delhi Municipal Corporation in not paying him the payscale of the post of Garden Chaudhary w.e.f 01.01.1990 through a representation Dated 14.05.2016. Admittedly the workman was retired on 31.07.2015. The **Annex 'B'** annexed with statement of claim thus itself shows that the claimant had not raised the dispute prior to his retirement when he was in service and alleged to had performing the work of a higher post of Garden Chaudhary than the post of Mali w.e.f. 01.01.1990. The date of

representation moved before the Conciliation officer is undoubtedly subsequent to the date of superannuation which indicates that the dispute was actually raised after the retirement of the workman.

- If the workman as he alleges was working and performing duties on a higher post than the post which he originally had by virtue of his initial appointment and regularization w.e.f 01.01.1990 till the date of his superannuation on 31.07.2015 but not paid the difference of salaries of the two post at any point of time, this is peculiar and surprising that why he never felt aggrieved of such inaction on the part of management. If he raises the issue of non payment of wages in pay scale of Garden Chaudhary during the aforesaid period after his retirement he has strict burden of proof to prove by direct evidence with regard to his being entrusted with duty of Garden Chaudhary from 01.01.1990 and continued as such till the date of his retirement.

- Importantly to note, it is undisputed that the workman claimant who was initially appointed as Mali and regularized as such had never been appointed on the post of Garden Chaudhary by the competent authority. This is also note Worthy that the claimant has also not claimed his promotion or regularization on the post of Garden Chaudhary. Admittedly, the claimant had no eligibility and qualification prescribed for such appointment by way of promotion from his original post of Mali/ Chokidar.

- The opposite party management by filing written statement of defence has denied the alleged working and performing the duties of the higher post of Garden Chaudhary at any point of time during his service tenure having been appointed/ regularized and posted as Mali Para 2,3,4 & 3-5 are reproduced from the written statement here below:-

- 2:- *That claimant has not procedure any valid documents with support of their claim as he claiming status of Mali w.e.f. 01.04.1990 claimant need to put strict proof with support of his claim.*
- 3:- *That the workman has never performed the duties of Garden Chaudhary and management was never assigning him task as per the post of Chaudhary. No such type of Office Order was issued by the competent authority.*
- 4:- *That the claimant of this instant claim was regularized on the post of Mali on 01.04.1988. So, present claimant cannot claim for benefits as per promotional post of Chaudhary w.e.f. 01.04.1990 as he never performed work of Chaudhary with the management as alleged in claim. Further, it is submitted that present claimant was not passed Trade Test in any conducted trade test by the Deptt., which is must required for the post of Garden Chaudhary.*
- 3-5:- *That the contents of Para No. 3 to 5 of the claim are wrong and denied. It is denied that the claimant was allotted the work of Garden Chaudhary w.e.f 01.04.1990. The claimant need put to produce strict proof in this regard. No Office Order from any competent authority/appointing authority has ever been passed in this regard. It is denied that the action of the management amounts to unfair labour practice as alleged. That the contents of Para No. 6&7 of the claim are wrong and denied. It is denied that the claimant is regularized on the post of Chowkidar and receiving remuneration for the same post and accordingly to revised pay scale from time to time. Further, it is stated that the workman has never performed the duties of Garden*

Chaudhary so no question arises for the pay scale of the Garden Chaudhary. It is denied that the action of the management amounts to unfair labour practice as alleged. Kindly read the paras of preliminary objection which is not repeated here for the sake of brevity.

- After the written statement of defence is filed by the management specifically denying the claim of the workman as to his performing the work as Garden Chaudhary, the claimant did not opt to accept the offer of the court, to file any rejoinder thereto, He denied to file any rejoinder as recorded in the order of the tribunal dated 25.03.2019. The issues were framed. The claim of the workman having been specifically denied and the documents including Annexure 'A' not admitted he had strict burden of proof to prove the fact of his working on the post of Garden Chaudhary a higher post than his original post of Mali/ Chokidar during the period commencing from 01.01.1990 to 31.07.2015 for a continues period of more than 25 years. The only papers alleaged to be a document in evidence to prove the fact, the workman had worked and performed the duties of the post of Garden Chaudhary is Annexure 'A' to the statement of claim. The said papers Annexure 'A' is blurred photocopy of an unknown original document, undated and without identification of the office and officers who prepared the same under an official authority and who may be termed as 'custodia legis' of the document. It is tried to be proved in evidence by claimant's oral examination recorded by the tribunal. Claimant is the only witness to prove the Annexure 'A' which is said to be a list of those Mali's who were entrusted with the duties of 'Chaudhary'. Who and when prepared this list for which period is neither pleaded in the claim statement nor in affidavit as statement of examination in chief before

tribunal is deposed. To prove the document neither the officer if any under whose signature it is issued is produced in evidence nor the person/officer who may recognize and identify the signature of the signatory is produced. The Annexure 'A' is not admitted by the management in their pleading the burden is not discharged by the claimant to prove the same. The said document is therefore unreliable and unworthy of credence for the tribunal.

- The Annexure 'A' (List) is neither issued as extract of any register maintained and preserved by the shown official in office having authority to do so in the ordinary course of official routine nor compared with the original and verified under his signature. In these situations the Annexure 'A' cannot be said to have been proved by the claimant in evidence nor can be said to have liberty from being proved for want of admission on the part of the opposite party. Even the said Annexure 'A' does not assume the character of documentary evidence worth to be taken into reliance by the tribunal.

- Another paper is an 'Identity Card' which had not been made Annexure to the statement of claim dated 27.08.2018 and could not be placed before the issues were framed on 25.03.2019. Even there is no pleading about the said Identity Card in the statement of claim, but placed in evidence making Annexure to the affidavit of the claimant filed as the statement in examination in chief in evidence dated 22nd June 2018, much prior to the filing of the statement of claim before the tribunal.

- The Identity Card which is photostate copy has no endorsement of date of it's issuance. There is no signature of the issuing authority. Before making Annexure to the affidavit the same is not compared with original and verified. No management witness was confronted with the

said Identity Card whether the same is genuine. Even the workman had not proved by producing the original before the court in verification of the genuineness of the Identity Card. In the situation the Identity Card shall also may not be termed as documentary evidence worthy of credence and reliance in proof of the claim of the workman.

- Lastly when admittedly the workman had never been appointed as Garden Chaudhary, he can not be supposed to have issued Identity Card in his favour addressing his post as Garden Chaudhary.

- One more papers though not pleaded and filed as Annexure to the claim statement but filed with the affidavit of claimant workman in statement of chief dated 22.06.2018 is 'No Dues Letter) issued on 17.03.2016. This papers had also not been compared with original placing before the tribunal in verification of the same before the tribunal on 19.07.2019.

Though the said document can not be said ingenuine but it has no bearing on the issue of workman's working on the post of Garden Chaudhary. The administrative officer Swami Dayanand Hospital who issued the letter after the date of superannuation dated 31.07.2015 is not produced as witness by the workman. The workman has not prayed to summon him as witness to enquire on what basis he addressed the workman in the 'No due Latter' dated 17.03.2016 issued by him. Even the witness of the management is not confronted with the said Annexure of the workman's affidavit .More over the No Dues Letter is in the specific context of vacating the house allotted to the workman in the course of his service tenure in the establishment either as Mali or otherwise, can not assume the probative force of certificate of appointment or posting a Garden Chaudhary.

- Lastly, in pleading or evidence adduced by the workman no where it is described that in what respect the duties of Mali, Chokidar and Garden Chaudhary are of different nature then also he was being discriminated illegally in not paying the pay scale of Garden Chaudhary to almost 25 years though he had worked andperformed the duties of Garden Chaudhary throughout. Even it is not pleaded that amongst the malis stated in the alleged list Annexure 'A' who are given the higher pay scale leaving him alone deprived of the benefits.

- The vehemence in pleading and argument is put on the right of parity with the beneficiates respondent of the W.P.((C) No. 7947 of 2010) **M.C.D V. Sultan Singh and others** decided on 20th April 2011 in favour of respondents. The case of the respondent (Workman of M.C.D) was that (Para 3 of the Sultan Singh Case).

“they had joined as Malies/ Chowkidars and were regularized with effect from different dates which were detailed by the respondents in their petition. The respondents also disclosed the dates and particulars since when they had been performing the duties and responsibilities of Garden Chaudhary pursuant to directions by their superior officers. The respondents contended that the petitioners admitted that the respondents were performing the duties and responsibilities of Garden Chaudhary in the list sent by the petitioner to its horticulture department dated 23rd January 2003 by the central zone. The respondents also relied on a list dated 10th August, 2004 disclosing the particulars of the Malies/ Chowkidars who had been working as Garden Chaudhary in south zone and another list dated 6th January, 2004 of west zone.”

- In the said writ petition, the petitioner MCD had challenged.

1. *“The order dated 29th January 2010 passed by Central Administrative Tribunal, Principal Bench, New Delhi in T.A No. 1317/2009 titled “Sh. Sultan Singh & Ors V. MCD” directing the petitioner to examine the claim of the respondents on the basis of the evidence produced before the Tribunal and thereafter process the payment of difference of pay of the post held and duties discharged by the respondents on the higher post of Garden Chaudhary if the claim of the respondents is found to be genuine and order dated 7th October 2010 in review application No. 270/2010 dismissing the review application.*

2. *Brief facts to comprehend the disputes are that the respondents filed a writ petition being W.P(C) No. 10158-86/2005 praying for a direction to pay 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 Chaudhary.*

- The writ petition was dismissed and order of the tribunal dated 29th January 2010 and 7th October 2010 were held not illegal, perverse or unsustainable.

- Unlike the workmen respondent, in the case of **MCD V. Sultan Singh & others** the case of the sole claimant in the present I.D. Case is not filed as to any existing claim but filed before the Central Government Industrial Tribunal after his retirement. The dispute in the claim statement or earlier also before the conciliation officer through representations is not raised or during the service tenure in the establishment of the management.

- The workman in the present I.D. Case though allegedly had got cause of action in the year 1990 when he was not paid difference of salary through allegedly performing the duties of Garden Chaudhary did

not joined the writ petition No. W.P(C) 10158.86/2005 with equally circumstanced workmen while he was in service.

- In the case of **MCD V. Sultan Singh & Others** the MCD had sent list of Malis performing the duties and responsibly of Garden Chaudhary to it's department of Horticulture dated 23th January 2003 thus there was an admission of their status and performance of duties & responsibility on higher post. In the present case the claimant workman had not pleaded and proved any such list to be treated as admission in evidence.

- The workmen in **MCD V. Sultan Singh & others** had sent a legal notice date 23rd February 2005 when they were in service to the department claiming equal pay for equal work, on failure of MCD to pay difference of wages. In the present case any such claim is not raised by the workman during his service tenure.

- Unlike the case of **MCD V. Sultan Singh & Others** the list of workmen with complete particular and the date since when they were working and discharging duties and responsibilities of Garden Chaudhary is not prepared duly signed and verified by any Identified official and approved by the competent officers.

- The workmen in the present case has not been successful in proving the fact of his working as Garden Chaudhary since 01.01.1990 to 31.07.2015 by reliable, credible and acceptable evidence.

- Learned AR for the claimant submitted that the claimant workman is similarly situated with the other workmen. Who, Where given benefit of pay scale of Garden Chaudhary in lieu of their working as Garden Chaudhary originally having being posted as Mali. They were not duly appointed by promotion on the post of Garden Chaudhary. In his claim statement the claimant has not given details and description of such

workmen with whom he is claiming similarity in status but not being paid in the pay scale of Garden Chaudhary like there.

- The Apex Court in **Grih Kalyan Kendra Worker's Union V. Union of India and others JT 1991 (1 SC 60).**

“the question of parity in pay scale cannot be determined by applying mathematical formula. It depends upon several factors namely nature of work, performance of duties, qualifications, the quality of work performed by them. It is also permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved.”

- In **The Secretary, Finance Department and Ors. V. West Bengal Registration Service Association and Ors. JT 1992 (2) SC 27**, the Apex Court observed:-

“job valuation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his divers duties and functions (iv) the extent and nature of freedoms/ limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in hi (vi) the extent of his dependence on

superiors for the exercise of his powers (vii) the need to coordinate with other departments etc. It was further observed that normally a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion (vi) the nature of duties and responsibilities. (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, Etc.

- It is therefore as seen in the aforesaid judgment of the Apex Court and the Hon'ble High Court judicature of Allahabad simply by saying that the workman claimant was working since 01.01.1990 on higher post of Garden Chaudhary till the date of his retirement on 31.07.2015 though throughout the aforesaid period he has been on the post of Mali/ Chokidar is not sufficient to allow his claim of payment of deference of the two pay scales i.e. that of the Mali and the Garden Chaudhary it is admitted by him that he had no educational qualification as per the eligibility criteria for selection on the post of Garden Chaudhary he has not pleaded the responsibility and duty of the Garden Chaudhary with which he was entrusted. There has been no evidence of raising the dispute on his part during his service tenure from 01.01.1990 to 31.07.2015 with regard to the inaction on the part of opposite party the management of establishment in not paying him the salary in the pay scale of Garden Chaudhary. The management in his reply and evidence on affidavit has asserted that the workman claimant has always been working on the post of Mali and was throughout the service tenure paid the salary of Mali only has no work of Chaudhary was entrusted to him. This fact as elaged by the

management has not been rebutted by way of rejoinder to the reply and counter affidavit even no evidence of taking work of Garden Chaudhary from him is given before the tribunal.

In **Federation of All India Customs and Central Excise Stenographers and Ors. V. Union of India (1988) 3 SCC 91**, it was held:-

Para 7:- *“there may be qualitative difference as regards reliability and responsibility justifying different pay scale. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination”.*

Para 11:- It was further observed that in **Para-11** of the judgment by the Apex Court that:-

“the same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less, it varies from nature and culture of employment”

Thus, in the absence of required pleading as to the quality and quantity of work the extent of his responsibility and accountability, the nature of contribution expected by him the extent of power vested in him the gravity and extent of duties and functions the tribunal will not be a linker

with his claim as to the payment of salary in pay scale of the post of Garden Chaudhary.

Though delay and latches ordinarily is immaterial for reference of any dispute by the appropriate government to the Industrial Tribunal as the Industrial Dispute Act 1947 does not envisage any such limitation by an extra ordinary delay of raising the dispute after the date of retirement by the claimant workman almost more than 25 years later from the date when the cause of action first arisen allegedly on 01.01.1990 the same is not entertainable at this stage by the tribunal. Emphasis laid down by the learned AR for the management in support of his contention to the above effect on the judgment of Apex Court in **Nedungadi Bank Ltd V. K.P.Madhuan Kutty and Others 2000 (2) SC 455** that even though no limitation is prescribe Under Section 10 of ID Act. The dispute may be held stale claim **Para – 6** of the aforesaid judgment as relied on the management is coated here below:-

“Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act, it is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference Under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has

become final it appears to us to be rather incongruous that the reference be made Under Section 10 of the Act in the circumstances like the present one.”

Further reliance is placed on **Haryana State Coop. Land Development Bank V. Neelam Reported in (2005) 5 SC 91**. “it is held that the conduct of the respondent in approaching the labour court after more than 7 years was likely considered a relevant factor for refusing the relief”. In the present case also the conduct of the claimant as gathered from the facts pleaded by him in his claim statement and evidence adduced and produced before the tribunal is sufficient to infer the claim baseless and stale, not to be entertained by the tribunal.

On the above discussion the claim of the workmen Sh. Abid Raza Zaidi deserves to be rejected and reference is answered in aforesaid terms.

Order

The claim is rejected. An award is, accordingly passed. It be sent to the appropriate Government of Publication.

Justice Vikas Kunvar Srivastava (retd.)
Presiding Officer
January 11, 2023

Vanshika Saini