

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 92/2013

Date of Passing Award- 29.07.2022

Between:

Shri Lekh Raj,
S/o Late Ganesh Lal,
C/o Through MCD General Mazdoor Union,
Room No.95, Barracks No. 1/10, Jam Nagar House,
Shahjahan Road,
New Delhi-

Workman

Versus

The Commissioner,
Municipal Corporation of Delhi (South)
9th Floor, Civic Centre, Minto Road,
Delhi-110002.

Management

Appearances:-

Shri B.K Prasad
(A/R)

For the claimant

Shri Rajiv Kumar Bhardwaj
(A/R)

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Municipal Corporation of Delhi (South), and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/26/2013 (IR(DU) dated 10/07/2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of MCD Delhi in not granting pay scale of Rs. 950-1500 w.e.f 20.04.1993 and revised from time to time alongwith all consequential benefits to workman Shri Lekh Raj S/o Shri Late Ganesh Lal Officiating Chaudhary w.e.f 20.04.1993 is fair and justified? What relief the workman is entitled to?”

This is a reference received from the appropriate government for adjudication if the denial by MCD in not granting the pay scale at the rate of 950-1500 to the claimant i.e. 20.04.1993 for the post of Garden chaudary is fair and justify.

As per the claim statement the claimant has joined the management as a Mali in the year 15/10/1991 as Mali on daily wage basis in the pay scale of

750- 940. He was allotted the work of Garden Chaudhary i.e. 1993 by the competent authority of Horticulture Department and was posted under Green Park, South Zone of MCD Delhi. Though he is working in the said post of Garden Chaudhary from 20.04.1993 the management has denied him the pay scale of Garden Chaudhary at the rate of 3050-4590 from that date. The post of Mali comes under unskilled category whereas the post of Chaudhary is the skilled category under Group C of the employment. Repeated demand made by the claimant for grant of proper pay scale as has been done in the case of Jai Chand vs. MCD and MCD vs. Sultan Singh were not considered. Having no other efficacious remedy the claimant approach the Labour Commissioner through the General Mazdoor Union where a conciliation was taken up. But for the adamant attitude of the management conciliation failed and the matter has been referred for adjudication. In the claim petition the claimant has prayed that a direction be given to the management to pay him the scale of Garden Chaudhary from 1993 i.e the date he started officiating in the post of Garden Chaudhary in the pay scale of 950-1500.

The management when noticed appeared and filed the written statement. The main challenge of the management is that the present dispute cannot be termed as Industrial Dispute since, the same has not been espoused by the union having the majority no. of members. The other challenge is that the claimant had never performed the duty of Garden Chaudhary and no order to that effect was ever issued by the competent authority of the management. However the management has admitted that the claimant was appointed on daily wage basis in the year 1990 as Mali and later on he was regularized on the same post in the pay scale of 750-940 (pre revised). There is a prescribe process for promotion to the post of Garden Chaudhary and it is so done when there is a vacancy in the sanctioned post. The said promotion is not automatic but subject to having requisite qualification and qualifying the trade test conducted by the department. The claimant had never qualified the said trade test and the claim is based upon misconceived facts. Thereby the management has prayed for dismissal of the claim petition.

On these rival pleadings the following issues are framed for adjudication.

ISSUES

1. Whether the action of the management MCD Delhi in not granting pay scale of 950-1500 w.e.f 20.04.1993 and revised the same from time to time with consequential benefit to the workman Shri Lakh Raj S/o Late Ganesh Lal as the officiating Garden Chaudhary is justified and what would be the effect?
2. To what relief the workman is entitled to.

During the hearing the claimant testified as WW1 and exhibited two documents and marked as WW1/1 and WW1/2. The said documents include the office order by which the claimant was ordered to act as the officiating

Garden Chaudhary w.e.f 20.04.1993. The other document exhibited by the claimant is the order dated 04.06.2013 issued by the Director Horticulture SDMC wherein all the deputy Director Horticulture were directed to verify, examine the claim of the applicant regarding discharge of duty in the higher post i.e. Garden Chaudhary and on verification if the claim is found to be genuine wage equal to the pay attached to the post they actually worked be paid to them. Besides examining himself the claimant has also examined the President of the MCD General Mazdoor Union as WW2 this witness proves three documents marked as WW2/1 to WW2/3. These documents have been exhibited to disprove the allegation of the management that the proceeding is not maintainable for want of espousal. Besides adducing oral and documentary evidence through its witnesses the claimant has confronted several documents to the witness examined by the management. On behalf of the management the Assistant Director Horticulture testified as MW1. He also proved several documents marked as MW1/1 to MW1/2 disprove the stand of the claimant.

At the outset of the argument the Ld. A/R for the claimant submitted that the law is well settled that equal remuneration should be paid for equal nature of work and denial of the same amounts to unfair labour practice. Relying on the judgments of the Hon'ble High Court of Delhi in the case of MCD vs. Sultan Singh decided in WPC NO. 7947 of 2010 which was later on upheld in the Hon'ble Supreme Court he submitted that the division Bench of the Hon'ble High Court have held that the list issued by Zonal Horticulture Department of MCD are the list issued by the competent authority and the persons whose name appear in the said list are entitled to the pay attached to the post in which they are working as the Garden Chaudhary. He thereby submitted that the name of the claimant Lekh Raj since appears at serial No. 35 of the list (WW1/1) issued by the Zonal office, he is entitled for the scale attached to that post from 20.04.1993 and denial for the same amounts to unfair labour practice. This argument of the A/R for the claimant has been rebutted on the ground that the name of the claimant was never mentioned in any list of the officiating Garden Chaudhary and the document marked as WW1/1 is not a document issued by the competent authority from a zonal office of the management.

FINDINGS

ISSUE No.1 and 2

The claimant in his sworn testimony has stated that his initial appointment was in the year 1993 but he was allotted the work of Garden Chaudhary w.e.f 20.04.1993 by the Competent Officer Horticulture Department. Not only that he was deputed to the South Zone under the Green Park Area to work under the Director of Horticulture and working as such since then. But he has been denied the pay scale of Garden Chaudhary.

To support his stand he has filed the document marked as WW1/1 which is an order issued by the Deputy Director Horticulture middle Zone issued on 12.08.2004 indicating the list of officiating Garden Chaudharies with reference to the date of their initial appointment and the date from which they are officiating and the area they are working. In this list at serial no. 35 the name of the claimant appears. The management has denied this document. The other document filed by the claimant is the letter dated 04.06.2013 issued by the Director of Horticulture and marked as WW1/2. By this letter the Director of Horticulture has authorized the Deputy Directors to verify and issue the list of the persons working as officiating Garden Chaudharies. Of course the order dated 4.6.2013 i.e. WW1/3 is with regard to the claimants in the case of Sultan Singh and others vs. MCD. The witness examined by the management is not none other than the Deputy Director of Horticulture. He has stated that the workman had never worked as the Garden Chaudhary being assigned the said duty. The claim advanced by him is illegal. While filing the copy of the recruitment rules the witness has stated that the workman has already been given the benefits of first ACP and second ACP and thus he is not entitled to the claim and the benefits. During cross examination this witness was confronted with the documents of the management which are the photocopies of the service book of the claimant and the office order of transfer of the claimant wherein he has been described as Mali. The claimant was cross examined at length by the management. But the witness remained firm in his stand and denied to the suggestions that he is still working as a Mali and was never ordered by the competent authority to officiate as Garden Chaudhary.

The issue whether the Malis directed by the Deputy Director Horticulture to officiate as Garden Chaudhary and the entitlement of those officiating Garden Chaudharies have been decided by the Hon'ble High Court of Delhi in the case of **MCD vs. Sultan Singh WPC No. 7947 of 2010** wherein the Hon'ble Court have held that the persons officiating when not claiming appointment to the post of Garden Chaudhary but claiming the salary attached to the post for having worked on adhoc basis in that post are entitled to the salary attached to the said post. The MCD had challenged the order of the Hon'ble High Court of Delhi in SLP NO. 20069 of 2011 before the Hon'ble Supreme Court and the same was dismissed as withdrawn. On behalf of the claimant the judgment of the Hon'ble Delhi High Court in the case of Jai Chand vs. MCD CW6514 of 2001 has been filed wherein the Hon'ble Court have disapproved the action of the management in not paying equal pay to the Garden Chaudharies officiating for taking the work from them for that post. The order of the management pursuant to the order passed in the case of Jai Chand has been filed as annexure B. thus, the claimant has categorically stated that the management is guilty of unfair Labour practice meted to the claimant for not granting the pay scale of Garden Chaudhary to him from the date he started officiating in the said post i.e. 20.04.1993. Accordingly it is held that the management is guilty of

unfair labour practice and the claimant is entitled to the pay scale of 950-1500 w.e.f 20.04.1993 and revision affected from time to time alongwith all other consequential benefits attached to the said scale w.e.f 20.04.1993. The issue is accordingly decided in the favour of the claimant. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the claimant is entitled to the pay scale admissible to Garden Chaudhary with effect from 20.04.1993, revision of the same as has been done in case of the persons placed in similar footing and grant all other consequential benefits to the claimant within 3 months from the date this award would become executable. The management is also directed to pay the arrear of the differential salary to the claimant within a period of further 6 months from the date of publication of the award failing which the amount accrued shall carry interest @9% from the date of accrual and till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
29th July, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
29th July, 2022.