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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 16th April, 2024**

+ **W.P.(C) 2233/2015 & CM APPL. 4000/2015 & CM APPL. 4002/2015**

CENTRAL PUBLIC WORKS DEPARTMENT Petitioner
Through: **Mr. Vivek Goyal, CGSPC with Mr. Gokul Sharma, Advocate (Through VC)**

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: **Mr. Anupam Srivastava, ASC for GNCTD with Ms. Sarita Pandey, Advocate for R-1 (Through VC)**
Ms. Avni Singh, Advocate for R-1
Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate for R-2
Mr. Anuj Aggarwal, Ms. Shreya Kukreti, Advocates for R-3 (Through VC)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The relevant facts necessary for the adjudication of the instant petition are as under:

- a. The petitioner is Central Public Works Department, a central government department which had engaged the respondent



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- no. 3/workman as a contractor to operate inlet and outlet valve of overhead tank on work order basis at a mutually agreed rate w.e.f. 1st March, 1988.
- b. The respondent no. 3 was awarded the first work order w.e.f. 1st March, 1998 to 30th September, 1988 @ Rs. 600/- per month. Thereafter, the workman continued to be awarded the same work on work order basis for different periods at different rates between the periods of 1st March, 1988 to 31st March, 1993. It is stated by the petitioner that the contract for work entered into with the respondent workman expired on 31st March, 1993.
- c. Subsequently, the respondent workman applied for regularisation of his services before the petitioner management on 10th August, 1994, however, the same got denied.
- d. Thereupon, the respondent workman preferred conciliation proceedings before the office of the Regional Labour Commissioner (Central) New Delhi, however, the same failed vide letter dated 10th January, 1997. Pursuant to which, the respondent workman filed an industrial dispute bearing ID No. 03/1998 before the learned Industrial Tribunal on 1st January, 1998.
- e. The learned Industrial Tribunal ruled in favour of the respondent workman on 26th April, 2004, holding that the



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respondent workman was entitled to regularisation and reinstatement at the post of 'peon – cum – waterman'. Moreover, the learned Industrial Tribunal also awarded the balance wages at par with the other regular employees of the corresponding category from 1st March, 1988.

- f. Aggrieved by the above said award, the petitioner filed W.P. (C) No. 6535/2005 before this Court where this Court upheld the reinstatement and set aside the regularisation of the respondent workman vide order dated 20th April, 2007. Aggrieved by the same, the petitioner filed LPA No. 1228/2007. In the said appeal, the workman filed an application bearing CM No.918/2008 under Section 17-B of the Industrial Disputes Act, 1947 (hereinafter "the Act") which was allowed *vide* interim order dated 5th December, 2008 and the petitioner was directed to pay either the last drawn wages or the minimum wage for corresponding category (whichever higher) to the respondent workman for the period starting from the date of the award till the date of disposal of the appeal, and to clear the arrears owed to the respondent workman under Section 17-B of the Industrial Disputes Act, 1947.
- g. Thereafter, the respondent workman filed a contempt petition bearing No. CAS (C) 326/2009 against the petitioner for non-compliance of the above said interim



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order. The Division Bench of this Court disposed of the said contempt petition vide order dated 27th April, 2009 wherein the petitioner's statement was recorded to the effect that the calculations furnished by the respondent workman were fallacious and that the petitioner would fully comply with the interim order.

- h. In compliance with the interim order dated 5th December, 2008, the petitioner paid a sum of Rs.2,13,805/- to the respondent workman towards the arrears w.e.f 26th April, 2004 to 30th April, 2009 and the same was calculated on the basis of minimum wages applicable for the post of "peon – cum – waterman".
- i. The Division Bench of this Court disposed of the pending LPA No. 1228/2007 vide order dated 25th August, 2010 directing the petitioner to reinstate the respondent workman, at reduced back wages @ 40%.
- j. Meanwhile, the petitioner had preferred SLP (C) No.19905/2009 before the Hon'ble Supreme Court to seek grant of stay against the interim order dated 5th December, 2008 which was dismissed vide order dated 8th October, 2010 on the grounds of the same being infructuous in view of the final adjudication of the aforesaid appeal.
- k. In terms of the award dated 26th April, 2004 passed in ID No. 03/1998, the respondent no. 2, i.e., the Regional Labour



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Commissioner issued a show cause notice dated 30th August, 2011 to the petitioner for recovery of Rs.8,43,659/- under Section 33 (C) of the Act.

- l. In response to the above, the petitioner sent a reply dated 14th September, 2011 seeking extension of time and also stating therein that the calculation of payment of back wages was wrong as the workman was not appointed as a regular worker. Thereafter, on the basis of a recovery certificate dated 17th November, 2011 (issued by the respondent no. 2 to respondent no. 1), the respondent no. 1 issued a notice dated 13th December, 2011 under Section 136 of the Delhi Land Reforms Act, 1954.
- m. The petitioner again sent a reply dated 29th December, 2011 to the respondent no. 1 and 2 and the respondent no. 1 issued the final notice dated 11th January, 2012 under Section 136 of the Delhi Land Reforms Act, 1954.
- n. The show cause notice dated 30th August, 2011 and the final notice dated 11th January, 2012 were quashed by this Court vide order dated 20th November, 2013 passed in W.P (C) No.854/2012 and the respondent no. 2 herein was directed to compute the amounts of back wages @ 40%.
- o. In the meanwhile, vide letter dated 13th December, 2013, the Assistant Engineer 3/F of the petitioner issued work order



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for an amount of Rs.53,508/-, however, the respondent no. 3 did not report to his duty.

- p. Thereafter, the respondent no. 2 sent a notice dated 21st April, 2014 and 8th August, 2014 for recovery of Rs.8,69,857/-, pursuant to which it also passed order dated 3rd November, 2014, thereby, asking the respondent no. 1 i.e., the Government of NCT of Delhi (hereinafter “GNCTD”) to initiate recovery proceedings and when the petitioner wrote another letter to the respondent no. 2 to consider its case, the respondent no. 2 informed the petitioner vide letter dated 25th November, 2014, that the matter has been disposed of after following the due process of law.
- q. Subsequently, the respondent no. 1 issued a notice dated 28th November, 2014 to the petitioner seeking recovery of Rs.8,69,857/- under Section 136 of the Delhi Land Reforms Act, 1954. Being aggrieved by the same, the petitioner has preferred the instant petition seeking quashing of the impugned notice dated 28th November, 2014.

2. Learned counsel appearing on behalf of the petitioner submitted that the impugned notice and order dated 8th August, 2014 is bad in law as the same has been passed without taking into consideration the entire facts and circumstances.



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3. It is submitted that the respondent no. 2 failed to take into account the fresh work order which was issued by the petitioner on 13th December, 2013 asking the workman to join his duties. Additionally, the respondent workman did not attend the hearing conducted by the respondent no. 2 and did not follow up on the scheduled dates for further discussion. As a result, on 28th November, 2014, the respondent no. 1 issued a notice under Section 136 of the Delhi Land Reforms Act, 1954, which is against the principles of natural justice.

4. It is further submitted that the impugned recovery notice was issued without taking into account the petitioner's plea and without providing any explanation, thus denying the petitioner an opportunity to be heard, especially considering that the hearings were scheduled for 9th January, 2015 and 10th February, 2015.

5. It is submitted that the petitioner is a Central Government Body funded by the public exchequer. Therefore, the implementation of impugned notice passed without jurisdiction and in violation of principles of natural justice would result in the misuse of public funds.

6. It is submitted that the respondent workman had filed a claim for back wages and the recovery of Rs.8,69,857/- using an incorrect calculation which is contrary to the directions issued by this Court on 20th November, 2013 in W.P. (C) No. 854/2012.

7. It is submitted that while issuing the impugned notice, the respondent no. 1 and 2 failed to recognize the purpose and intent of the orders dated 20th April, 2007 and 25th August, 2010. In order dated 20th April, 2007, the



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learned Single Judge had directed the reinstatement of the respondent workman while overturning the regularisation order of the learned Industrial Tribunal. The same clarifies that the regularization of the respondent worker could not be ordered, as the position in question lacks recruitment regulations.

8. It is also submitted that the respondent workman is not directly employed by the petitioner and as per the settled law, an individual operating on a work order or contractual basis cannot be eligible for regularisation, which is also stated in the CPWD scheme dated 11th March, 2011.

9. It is further submitted that the grant of subsequent relief by the Court below is not possible when the substantive and preliminary relief has been denied. In the order dated 25th August, 2010 which disposed of the appeal bearing LPA No. 1228/2007, the Division Bench of this Court subsequently ordered the reinstatement of respondent workman without regularization, in addition to the payment of only 40% back wages.

10. It is submitted that due to the failure of the respondent no. 2 to consider the petitioner's reply and letters, the recovery certificate dated 3rd November, 2014, and the impugned recovery notice dated 28th November, 2014, are perverse, misconceived and hastily executed.

11. It is submitted that the respondent no. 2 neglected to recognize that the recovery of Rs.8,69,857/- is incorrect, as it was calculated using a pay scale that was equivalent to that of similarly situated regular employees of the petitioner on government-approved scales, with the additional benefit of the 6th Central Pay Commission, being considerably higher. The same is



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erroneous as the respondent workman was not eligible for regular employment compensation which was also observed and held by the learned Single Judge of this Court in the order dated 20th April, 2007 setting aside the regularization.

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

13. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

14. It is submitted that the present petition is not maintainable due to the petitioner's incorrect assertion that the respondent workman will receive 40% back wages until superannuation.

15. It is submitted that in accordance with the settled legal proposition, the respondent workman is entitled to 40% back wages from the date of termination, i.e., 3rd March, 1993 till the date of passing of the award, i.e., 26th April, 2004. Consequently, he will receive full back wages from the date of the award, i.e., 26th April, 2004 until his superannuation.

16. It is submitted that the present petition is not maintainable as the wages of daily rated labourers are computed in accordance with the petitioner department's OM No.45/1/87-EC/X Vol. (IV) dated 21st October, 1990 (hereinafter "office memorandum"). The petitioner remunerates daily rated workmen using the formula given in the aforementioned office memorandum. The issue whether this formula is applicable to the daily rated workmen was deliberated before this Court in the case titled **CPWD v.**



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Karam Singh, 2013 SCC OnLine Del 2592 where recovery certificates were under challenge. The said writ petition was dismissed by this Court vide order dated 15th July, 2013 and the payment in accordance with OM dated 21st October, 1990 was deemed applicable to daily rated workmen in the present case.

17. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

18. Thereafter, the learned counsel appearing on behalf of the respondent no. 3 workman also opposed the instant petition submitting to the effect that the respondent no. 2 correctly calculated the dues which the petitioner owes to the workman and there is no irregularity of any kind thereto.

19. It is submitted that any employee of the CPWD is to be treated as a daily wage employee and the remuneration of daily wage employees of the CPWD must be as per the minimum pay scale.

20. It is submitted that the impugned notice has been passed after taking into consideration the entire facts and circumstances and the petitioner has been unable to advance any arguments to show the error apparent on the face of the impugned notice.

21. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

22. Heard the learned counsel appearing on behalf of the parties and perused the record.

23. It is the case of the petitioner that the learned Regional Labour Commissioner has calculated the 40% back wages only up to 26th April,



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2004 and 100% back wages from 27th April, 2004 to 31st December, 2011 and the same is in clear violation of the order dated 20th November, 2013 of this Court vide which this Court had quashed the earlier notice of recovery of Rs.8,43,659/- with a direction that the Labour Commissioner shall compute the amount of back wages at 40% in terms of order dated 25th August, 2010 passed in LPA no.1228/2007 wherein the workman was to be treated as a daily rated worker.

24. In rival submissions, the respondents have opposed the instant petition submitting to the effect that the respondent workman is entitled to 40% back wages from the date of termination, i.e., 3rd March, 1993 till the date of passing of the award, i.e., 26th April, 2004. Consequently, he will receive full back wages from the date of the award, i.e., 26th April, 2004 until his superannuation. The respondents have further contended that the wages of daily rated labourers are computed in accordance with the petitioner department's OM No.45/1/87-EC/X Vol. (IV) dated 21st October, 1990.

25. Therefore, the question before this Court is to determine whether the respondent no. 2 has rightly issued the impugned recovery notice dated 28th November, 2014 and whether there is any illegality or irregularity in the impugned order dated 8th August, 2014.

26. The order dated 8th August, 2014 was passed by the respondent no. 2 under Section 33C of the Act. In view of the said order, the respondent no. 2 had passed order dated 3rd November, 2011 addressing the District Collector to initiate recovery of the amount due to the workman and accordingly, a



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notice dated 28th November, 2014 under Section 136 of the Delhi Land Reforms Act, 1954 was issued by the respondent no. 1.

27. In order to determine the issues in the instant petition, this Court deems it appropriate to delve into the legality of the order dated 8th August, 2014. The relevant extracts of the same are as under:

“...An application is filed under Sub Section 1 of Section 33C of Industrial Disputes Act 1947 (here-in-after referred to as the Act) by Sh. M.N. Singh S/o Late S.P. Singh for realization of amount as per Award dated 26-04-2004 and the Hon'ble High Court of Delhi in LPA 1228/2007 modified the back wages to 40%. Claimant also stated that he is entitled back wages from the date of termination i.e. 3-3-1990 upto 26-04-2004 i.e. the date of award and thereafter full wages w.e.f 27-04-2004 to 31-12-2011 and the management did not reinstated him upto the date of superannuation i.e. 1-1-2012.

2. The workman remained out of job from 3-3-1993 upto 31-12-2011 i.e. the date of superannuation. The management filed the Writ Petition challenging the award and also filed LPA and the same was disposed off by the Hon'ble High Court of Delhi on 25-08-2010. On the similar direction as in LPA No. 300/2007 related to the matter of CPWD Vs. Satpal. The claimant annexed chart showing the calculation of the claim as 'Annexure-A' with the application alongwith the realted papers.

3. The stand of the management that Sh. M.N. Singh will get 40% amount upto his superannuation is not correct. As per the settled law the worlanan will get back wages from the date of superannuation upto the date of award and thereafter he will get ftill wages till physical reinstatement. The Hon'ble High Court of Delhi in writ petition (Civil) No. 1371/2006 related to Jagminder Singh Vs. Executive Engineer, FCD (Faridabad Central Division), CPWD vide its judgment dated 25-07-2006



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has held that the workman in that case Sh. Jagminder Singh is entitled 25% back wages upto the date of award dated 6-5-2004 and thereafter he is entitled full wages upto the date when he actually allowed to join. The operative para 1 & 2 of the said judgment is reproduced as under:

"1. The petitioner was a workman with respondent no. 1 and had been terminated with effect from 9-8-1983. He raised an industrial dispute which was decided by award dated 6-5-2004. The award directed the management to reinstate the petitioner with 25% back wages. The petitioner says that the award dated 6-5-2004 was published on 14-06-2004. The petitioner further says that the petitioner has been paid only 25% back wages and was taken in service only on 9-2-2005. He further submits that he is entitled to full wages from the date of the award till he was actually allowed to join."

2. On behalf of the respondent it is stated that the respondent is required to implement the award within two months of its publication and therefore the respondent was within its right to take the petitioner on duty from 14-08-2004. The petitioner was actually taken on duty on 9-2-2005. It is explained that in the meantime the respondents have been seeking the opinion of the different branches of the government. This however, will not disentitle the petitioner to get the benefit of the award dated 6-5-2004. The respondent therefore cannot withhold the wages of the petitioner from 14-08-2004 till he actually joined i.e. 9-2-2005. The respondent therefore shall make payment of the dues to the petitioner in this regard within two months hereof."

4. That applicant workman explained that in the establishment of CPWD the daily rated employees are being paid equal work with time scale with all allowances except increment and



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accordingly he is entitled the wages from the management as per ' their office memorandum no. 45/1/87-EC.X Vol. (IV) dated 21-10-1990 as well as 28-01-1991 as skilled workman. The office memorandum dated 21- 10-1990 reads as under;

References have been received from some of the Superintending Engineers/Executive Engineers etc. seeking clarification regarding method of computing daily rates payable to daily rated workers of the CPWD on the equal pay for equal work. It has been decided that the following formula may be adopted for the purpose of working out daily rates of wages of daily rated workers of the CPWD.

The total monthly emoluments admissible to regular counter parts of the daily rated workers at the minimum for the respective scale of pay may be multiplied by number of days in a particular month after dedudcting there from the dats of absence plus the days of rest fallin in the week/weeks in which the worker remained absent and the result may be divided by number of days in the month. The figure so arrived will be the daily rate of wages of the worker.

Suppose number of days in a month is A, amount of emoluments in a particular month of a regular counter-part is B, number of days of absence of worker in a month is C and the number of rest days falling in the week/weeks on which the worker remained absent is D. Then the formula for working out daily rates of wages of a daily rated workers would be as under:

Daily rates of wages = $A - CrC + D$)xB

Note: if a worker works for all the working days in a month availing the admissible rest days, he is entitled to full wages admissible at the minimum stage of the



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respective scale of pay including DA/HRA/CCA admissible to his regular counter parts.

5. Claimant also mention the operative para of the award dated 26- 04-2004 of Sh. R.N. Rai, the than presiding officer of CGIT-cum- Labour Court-II, New Delhi in I.D. No. 3/98. has also awarded payment of equal pay for equal work and treated him workman of the management.

6. That the similar situated workman i.e. Sh. Karam Singh, Baldev Singh and Bal Kishan all are treated as daily rated workman as per the decision of Hon'ble High Court of Delhi. In their respect the recovery certificates were issued by the officer of Regional Labour Commissioner (Central), New Delhi vide its order no. ND. 17/M/7M/11-B-2 dated 3-8-2012 and against the said order the management filed the writ petition. W.P. ©6552/2012 and W.P. (C) 3524/2010 and the said petitions were dismissed on 15-07-2013. It is pertinent to mention here that the Hon'ble High Court vide its order dated 15-07-2013 allowed the payment in terms of office memorandum dated 21" October 1990 applicable to daily rated, workers issued by the Director General (Works), CPWD, New Delhi. The operative para 8,9 & 10 of the order dated July 2013 in Writ Petition © 6552/2012 is reproduced as under:

8. Sh. M.N. Singh claimant claimed the minimum of time scale plus all allowances except increment revised from time to time. The details are as under:

i) 40% back wages w.e.f. 03-03-93 to 26-04-04	Rs. 194490/-
ii) 100 %wages w.e.f. 27-04-2004 to 31-12-2011	
till superannuation without reinstatement	Rs. 871588/-
iii) Less amount paid to Sh. M.N. Singh v/s	
17B (-) of I.D. Act by the Hon'ble Division	
Bench of Hon'ble High Court of Delhi	(-)Rs. 303706/-



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Amount due to claimant

Rs. 869857/-

6. Now, it is settled law that daily rated workers in CPWD are entitled the same wages as per the office memorandum dated 21-10-1990 as well as 28-01-1991 and Sh. M.N. Singh being a daily rated workman in an unskilled category is entitled to wages as per the said office memorandum.

In view of the above, stated conclusion the claim of the applicant amount to Rs. 869857/- for the period from 03-03-1993 to 31-12-2011 is just fair and legal as such is liable to be paid by the management of Executive Engineer, F-Division, CPWD, Krishi Bhawan, New Delhi to the workman, Sh. M.N. Singh within 15 days of receipt of this order.

28. Upon perusal of the above extracted paragraphs of the impugned order, it is observed that the workman had filed an application under Section 33C of the Act seeking realization of the amount as per the award dated 26th April, 2004. As per the said award, it was held by the Industrial Tribunal that the respondent workman was entitled to be reinstated with full back wages as well as his services to be regularized. The decision made in the said award was concluded by the Division Bench of this Court in LPA No. 1228/2007 where the regularization was set aside and the present petitioner was directed to pay 40% of the back wages instead of full back wages.

29. Accordingly, the workman had filed the above said application seeking back wages from the date of termination, i.e., 3rd March, 1990 upto 26th April, 2004, i.e., the date of the award and thereafter full wages w.e.f.



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27th April, 2004 to 31st December, 2011 upto the date of superannuation which is 1st January, 2012 as the management did not reinstate him.

30. The learned Regional Labour Commissioner held that the stand of the petitioner CPWD that the workman is entitled to 40% amount upto his superannuation is not correct since as per the settled law, the workman will get back wages from the date of termination upto the date of award and thereafter he will get full wages till physical reinstatement. It was further held by the learned Regional Labour Commissioner that as per the office memorandum dated 21st October, 1990 as well as 28th January, 1991, the daily rated employees are being paid equal work with time scale with all allowances except increment at par with a skilled workman in the petitioner's establishment and therefore, held the workman to be entitled to the same wages.

31. Accordingly, the learned Regional Labour Commissioner calculated the arrears amounting to Rs.8,69,857/- as per the below terms:

a. 40% back wages w.e.f. 3 rd March, 1993 to 26 th April 2004.	=Rs.1,94,490/-
b. 100% wages w.e.f. 27 th April 2004 to 31 st December, 2011 (till superannuation without reinstatement).	=Rs.8,71,588/-
c. Subtracting the amount paid to the workman under Section 17-B	=(-)Rs.3,03,706/-



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of the Act.	
Amount due to the claimant/workman.	=Rs.8,69,857/-

32. At the outset, this Court is of the view that the submission of the petitioner that the workman's wage cannot be calculated at par with a regular employee of the petitioner establishment is incorrect and cannot be appreciated.

33. The petitioner's contention primarily revolves around the misconceived ground that the workman's services cannot be regularized. The petitioner is re-agitating the said issue and in this regard, it is pertinent to mention here that the aspect of regularization of the services of the workman has already been set aside vide order dated 20th April, 2007 passed by this Court in W.P. (C) No. 6535/2005. Therefore, there exists no dispute regarding the same.

34. The learned Regional Labour Commissioner had calculated the workman's wage as per the formula prescribed in the office memorandum dated 21st October, 1990 as per which the petitioner establishment had deduced a method to calculate the wages of the daily rated workers which is to be taken with respect to the regular counterparts working with the petitioner.

35. The above stated issue also came up before a Coordinate Bench of this Court in **CPWD v. Karam Singh, (Supra)**, wherein, the above said office memorandum was considered and the workman's wage calculated in terms



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of the said memorandum was upheld. Relevant extracts of the said judgment are as under:

“2. Shri Baldev Singh, Shri Bal Kishan and Shri Karam Singh raised an industrial dispute which was referred to Central Government Industrial Tribunal (CGIT) in the following terms:-

“Whether the action of the management of CPWD, Director General, CPWD, New Delhi in terminating the services of Sh. Baldev Singh S/o Sh. Roshan Lal, Sh. Bal Kishan S/o Sh. Dhan Singh and Sh. Karam Singh S/o Sh. Samay Singh, Drivers w.e.f. 30.03.92, 30.09.93 and 16.10.93 is just, fair and legal? If not, what relief the concerned workman is entitled to and from what date?”

3. Shri Baldev Singh, Shri Bal Kishan and Shri Karam Singh claimed that they were engaged by CPWD as Drivers on 11th February, 1988, 5th October, 1989 and 7th July, 1992 respectively for driving the Water Tanker on work order basis without stipulation of any specific period. They continued to perform their duties uninterruptedly under the supervision and control of officers of the Horticulture Development Division-II, CPWD. They were paid minimum wages as that of a skilled worker fixed by the Govt. of NCT of Delhi from time to time. They were treated as daily rated workers on muster roll. They completed 240 days in a calendar year. All of a sudden their services were terminated illegally on 30th March, 1992, 30th September, 1993 and 16th October, 1993 respectively. They were neither given one month notice nor one month salary in lieu of the notice nor the compensation, gratuity etc.

4. Director General (Works), CPWD contested the claim of workmen. It was claimed that workmen were hired through the contractors. Workmen were hired as drivers on contract basis for a specific period. Accordingly, they were not entitled to one month's notice pay or compensation.

5. All the parties were afforded opportunity to lead evidence. Thereafter, Tribunal, on the basis of evidence adduced by



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parties, held that there was no evidence on record to show that the claimants (workmen) entered into any kind of contract with the management to drive the Water Tanker on contract basis. On the contrary, it was proved by the workmen that they were employed on work order basis without stipulation of any period. They were treated as daily rated workers. There existed relationship of employer and employee between the management and workmen. It was further held that they had worked for more than 240 days in a calendar year. Their termination was held to be illegal. Their reinstatement with 40% back wages along with all consequential benefits from the date of their termination was ordered.

6. Management-CPWD preferred Writ Petition (Civil) No. 13733/2006 in this Court which was disposed of on 20th February, 2007. Writ petition was dismissed qua Shri Baldev Singh and Shri Bal Kishan. As regards Shri Karam Singh, the matter was remanded to Industrial Tribunal for redetermination on the point as to whether he had completed continuous 240 days of service. On remand, Tribunal held enquiry in this regard and after affording opportunity to the parties, vide Award dated 20th October, 2010, held that Shri Karam Singh had rendered 240 days of continuous service prior to his termination by the management. This finding was not assailed in the High Court.

7. In the Award Tribunal categorically held that workmen had been working with the management as daily rated worker and their existed relationship of employer and employee between them. It was held that they were not hired on contract basis. This finding of fact was not disturbed in W.P. (C) 13733/2006. In fact, Award was upheld on this point.

8. Labour Commissioner has calculated the wages in terms of Office Memorandum dated 21st October, 1990 applicable for daily rated worker. In W.P. (C) 6552/2012 the order passed by Labour Commissioner on an application under Sub-Section 1 of Section 33(C) of the Industrial Disputes Act, 1947 filed by



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Shri Karam Singh has been challenged by CPWD. Since wages have been calculated in terms of the Award and the amount has been quantified as Rs. 9,35,034/- in terms of the office memorandum, inasmuch as, no calculation error could be pointed out during the course of hearing challenge is unsustainable. The only grievance of the CPWD is that Shri Karam Singh was working on contract basis, thus, his wages could not be calculated as that of daily rated workers in terms of the aforesaid office memorandum I do not find any force in this contention of learned counsel, inasmuch as, the Award having attained the finality whereby Shri Karam Singh, Shri Baldev Singh and Shri Bal Kishan have been held to be daily rated worker CPWD cannot persist to say that these workmen were contractual employees. In W.P. (C) 3524/2012 notice bearing No. ND/17/M-28/2006-B-II dated 27th March, 2012 has been challenged with regard to Shri Baldev Singh and Shri Bal Kishan on the same ground which is untenable since Award has already attained finality. Wages have been calculated in terms of office memorandum.

9. In view of the above discussions, WP (C) no. 3524/2012 and WP (C) no. 6552/2012 are dismissed.

10. As regards W.P. (C) 6806/2011 is concerned, same is allowed and respondent is directed to proceed with recovery of amounts due under the impugned recovery certificate No. ND/17/M-28/2006 and pay the same to petitioners.”

36. In the above judgment, similar facts and issues were agitated. It was a case where the contention of the management regarding denial of relief of regularization and equal wages to such workmen who were performing similar kind of duties like their regular counter parts, was rejected by this Court and the calculation of wages in terms of office order dated 21st October, 1990 applicable for daily rated workers was upheld. It was further



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held that when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages, there is no question of entertaining such plea time and again. Conclusively, the workman therein was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal therein.

37. In this regard, the petitioner has been unable to produce any evidence or submissions which prove the above stated observation to the contrary. Therefore, this Court does not find any merit in the petitioner's case with respect to the applicability of the office memorandum by virtue of which the workman's wage has been calculated.

38. Insofar as the issue of deciding the back wage and full wages is concerned, this Court has referred to an observation made by the Division Bench of this Court in **Vinod Kumar v. State (NCT of Delhi)**, 2023 SCC OnLine Del 6011, wherein it was noted that the period 'not spent on duty' is to be construed for the purposes of back wages. Relevant paragraphs of the same are as under:

"35.....A necessary corollary of such reinstatement shall be that even the period treated as 'not spent on duty' will be counted for the purpose of seniority, and also for all consequential benefits. The period treated as 'not spent on duty' must be construed for the purposes of back wages only and not for the purposes of seniority, promotion etc."

39. This Court has perused the contents of the award as well as the decision of this Court in W.P. (C) No. 6535/2005 and in LPA No. 1228/2007.



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Upon perusal of the same, this Court is of the view that the award dated 26th April, 2004 had attained finality after the decision was made in the above stated appeal and therefore, the direction of this Court to award 40% back wages to the petitioner is final and cannot be re-agitated.

40. The workman had approached the learned Regional Labour Commissioner, i.e., the respondent no. 2 to claim its legal dues, under Section 33C of the Act, to which he was legally entitled to under the law. In regard to the same, *firstly*, as far the period for which the 40% back wages is granted, the same, as per law, is to be calculated from the date of termination upto the date of award, and the same has been rightly considered by the respondent no. 2.

41. *Secondly*, the respondent no. 2 has calculated 100% wages from the date of reinstatement upto the date of superannuation. In this regard, the petitioner has submitted that a letter dated 13th December, 2013, by the Assistant Engineer 3/F of the petitioner was sent to the respondent workman issuing work order for an amount of Rs.53,508/-, however, the workman did not report to his duty. In respect of the same, it is observed that as per order dated 8th August, 2014, the workman was superannuated on 1st December, 2012, therefore, asking the workman to report on duty vide letter dated 13th December, 2013 which is after a year of getting superannuated is not a legally sustainable argument and the same seems to be a dilatory tactic on the petitioner's part to avoid its liability towards the dues of the workman.

42. Accordingly, this Court finds that the workman was never actually reinstated by the petitioner on his duty and the award of his reinstatement



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attained finality. Therefore, the workman is duly entitled to the wages in light of his reinstatement and since he was never reinstated, the wages calculated from 27th April, 2004 upto the date of superannuation is correct as no record contrary to the same has been produced before this Court which would imply otherwise with respect to the employment of the workman.

43. *Lastly*, the learned Regional Labour Commissioner had subtracted the amount paid to the respondent workman by the petitioner in terms of Section 17-B. In light of the same, this Court is of the view that the respondent no. 2 has duly considered the factual scenario and has taken all the relevant material into account while calculating the dues.

44. Hence, in order dated 8th August, 2014, the wages of the respondent workman calculated in terms of the office memorandum, inasmuch as, no calculation error could be pointed out during the course of arguments, the challenge by the petitioner against the same is unsustainable.

45. Here, this Court deems it imperative to set out the law with regard to Article 226 of the Constitution of India under which the instant petition has been filed. It is a settled position of law that in order to invoke the writ jurisdiction of this Court, it has to be proved that the Court below has exceeded or usurped its jurisdiction, or acted illegally; or in contravention to any law, or there is an error on the face of the record.

46. In light of the above discussions on facts as well as on law, this Court is of the considered view that the petitioner has failed to make out any illegality or perversity on the face of the impugned order dated 8th August,



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2014 and notice dated 28th November, 2014, therefore, the same do not suffer from any infirmity.

47. There is nothing on record before this Court to imply that the contents of the impugned notice and the order are in contravention to any law and the same are hereby upheld.

48. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 16, 2024

dy/ryp/av