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

+ **W.P.(C) 15023/2006, CM APPL. 43598/2019**

MCD

.....Petitioner

Through: Mr. Akhil Mittal, Standing Counsel
with Ms. Riddhi Jain, and Ms. Shayna
Das Pattanayak, Advs.

versus

DELHI NAGAR NIGAM CHATURTH SHR **.....Respondent**

Through: Mr. Rakesh Kumar, Mr. Achin Goel,
and Mr. Ramesh Babu, Advs.

CORAM:

HON'BLE MS. JUSTICE SHAIL JAIN

ORDER

30.04.2026

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1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India by the Petitioner – Municipal Corporation of Delhi (hereinafter referred to as "MCD") – challenging the legality and validity of the award dated 10.01.2006 passed by the Learned Presiding Officer, Industrial Tribunal-III, Karkardooma Courts, Delhi in I.D. No. 78/1995.
2. The instant issue originates from an industrial dispute raised by the Respondent workmen, comprising Chowkidars and other Class-IV employees employed under the MCD. The dispute pertained to two broad issues viz regularization of service, and entitlement to overtime wages for work performed beyond prescribed hours, including on Sundays and gazetted holidays. The dispute was referred for adjudication to the Industrial Tribunal in the year 1995.
3. During the pendency of the dispute, a meeting was held on



29.11.1996 between MCD and representatives of the Class-IV Union (Lokhit Morcha), wherein certain grievances were discussed. Subsequently, MCD issued a circular in March 1997 adopting a policy for overtime allowance, limiting benefits/extra payment *qua* overtime to a maximum of 50 hours per month with effect from 01.01.1997.

4. After completion of pleadings and evidence, the Industrial Tribunal passed an award dated 05.04.2003, whereby the claims of the workmen under both terms of reference were dismissed and answered against them. The said award is extracted as under:

“In view of my findings to the foregoing issues the claim of the workmen fails and accordingly the same is dismissed. Both the terms of reference are answered in negative. The workmen are not entitled for any relief.”

5. Aggrieved thereby, the workmen preferred W.P.(C) No. 20710/2005 before this Court. *Vide* order dated 07.12.2005, this Court affirmed the findings of the Industrial Tribunal with respect to the first term of reference concerning regularization. However, with respect to the second term of reference concerning overtime entitlement, this Court found an internal inconsistency in the Tribunal's findings and accordingly set aside the answer to that reference. The matter was remanded to the Industrial Tribunal for issuance of appropriate directions in terms of the findings already recorded by this Court. The relevant paragraph(s) is extracted as under:

“The matter is remanded to the Industrial Tribunal for making appropriate directions in terms of the findings which are noticed in part 14 of the Award in respect to reference no. 2.

In view of the foregoing directions, the answer to the reference in para 21 of the Award cannot be sustained and



the same is hereby, set aside and quashed.

The parties shall appear before the Industrial Tribunal No. III in I.D. 78/1995 on 10th January, 2006 for appropriate directions in this behalf.

The writ petition is allowed to the afore-stated limited extent.”

6. For the sake of convenience para 14 and para 21 of the Award are extracted under:

“14. The above admission of MN1 established that although the daily wage chowkidars were performing the same duty of same value and period, as performed by regular chowkidars, but the overtime wages were paid only to the regular chowkidars and not to the daily wages chowkidars. In other words, the management took the work from the daily wage chowkidars beyond their normal working hours without payment of any wages for that period which amounted to traffic in human being or Begar prohibited by Article 23 of the Constitution of India. In view of the law of land, no employer can take work without paying wages for the same. It is the fundamental right of a citizen of India to receive wages for the period he worked. The violation of the fundamental right is unlawful. The public undertaking or the Corporation are required to function as per the rules of law and not contrary to the same. I am supported of this view by the decision of Hon’ble High Court of Delhi in case of Delhi Development Authority v/s Virender Kumar Tyagi 1997 (7) SLR 352. In the para No. 4 Hon’ble High Court pleased to observe as under: -

“4. In this context, we also note the provision of Article 23 of the Constitution, which reads as under:-

23. Prohibition of traffic in human and forced labour. (1) Traffic in human beings and “begar” and other similar... of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.



The word “begar” in this Article has obvious reference to traffic in the human beings and forced labour. In this case, the respondent may actually not be performing forced labour, but he is certainly made to work as a Legal Assistant, and if he is not paid as a Legal Assistant, it cannot be held that within “begar” is not being performed by him. It is only when he is paid as a Legal Assistant that it can be said that prohibition of Article 23 of the Constitution is not attracted to this case.”

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“21. In view of my findings to the foregoing issue the claim of the workmen falls and accordingly the same is dismissed. Both the term of reference are answered in negative. The workmen are not entitled for any relief. This award is accordingly passed. Appropriate Government be informed.”

7. In pursuance of the remand order dated 07.12.2005, the parties appeared before the Industrial Tribunal on 10.01.2006. After hearing the parties, the Tribunal proceeded on the basis of the findings and directions contained in this Court's order dated 07.12.2005. Taking note of the inconsistency identified in the earlier award with respect to the second term of reference, and being guided by this Court's finding that Chowkidars were entitled to overtime wages for work performed on Sundays and holidays in cases where compensatory leave had not been granted, the Tribunal modified the award dated 05.04.2003 to that limited extent. The said award is recorded as under:

“In view of the aforesaid directions, the award given by this tribunal dated 05.4.2003 is modified to the extent, that issue no 1 is decided in favour of the workmen and it is held, that Chowkidar who worked beyond 50 hours of limitation



would be entitled to wages that much period at the rate of over time allowance and they would also be entitled to overtime wages for work of Sunday and holidays where compensatory leaves are not given. The benefits which might have accrued to the workmen shall be released to the workmen within a period of two months from today along with interest @9%. This order shall be part of the award dated 05.4.2003. The copy of this order along with order passed on 05.4.2005 be forwarded to the appropriate government for publication in accordance with law. The application filed by the appellant is disposed off accordingly. File be consigned to the record room.”

8. As is evident from the impugned award dated 10.01.2006, the Industrial Tribunal-III directed as follows:

- (i) Chowkidars who worked beyond the prescribed limit of 50 hours per month would be entitled to overtime wages for such additional period;
 - (ii) Chowkidars would also be entitled to overtime wages for work performed on Sundays and holidays where compensatory leave was not provided;
 - (iii) The benefits accruing to the workmen were to be released within two months; and
 - (iv) Such payments would carry interest at the rate of 9% per annum.
- The directions were further declared to form part of the earlier award dated 05.04.2003.

9. Hence, the present petition challenges the validity of the aforesaid award.



SUBMISSIONS OF THE PETITIONER

10. Learned counsel for the Petitioner contends that the order of this Court dated 07.12.2005 only directed the Tribunal to issue appropriate directions in terms of the findings already recorded. He goes on to submit that the very order did not authorise the Tribunal to pass a fresh or substantive award or to modify the earlier award of 05.04.2003 and the Tribunal exceeded its jurisdiction by substantially modifying the earlier award and granting fresh substantive relief to the workmen, which was beyond the scope of the remand.

11. He further submits that the Industrial Tribunal passed the impugned award on the very first date fixed for directions, without affording the Petitioner any opportunity to make submissions or lead evidence. This procedure amounts to a gross violation of the principles of natural justice.

12. Counsel for the Petitioner additionally submits that MCD had adopted a policy in consonance with the Directorate of Education, Government of NCT of Delhi, limiting overtime to 50 hours per month, along with provision of compensatory leave for work done on holidays. This policy remained unchallenged and continues to govern the service conditions of the Chowkidars.

13. He concludes his arguments by submitting that the nature of duties performed by Chowkidars is essentially intermittent and does not warrant payment of overtime beyond the limits prescribed by the management's policy.



SUBMISSIONS OF THE RESPONDENTS

14. Learned counsel for the Respondent workmen supports the impugned award and contends that the Tribunal merely implemented the directions of this Court dated 07.12.2005 in letter and spirit. The findings regarding entitlement to overtime had already been conclusively recorded by this Court and were binding on the Tribunal. No fresh adjudication was either required or permissible.

15. He further submits that the proceedings on 10.01.2006 were limited to the formal issuance of directions flowing from this Court's order, and the Tribunal rightly did not call for fresh evidence or argument on merits.

16. It is also submitted that the petition suffers from delay and laches and has been filed primarily to frustrate and obstruct the implementation of the award and to deny legitimate benefits to the workmen who have been embroiled in this litigation for decades.

17. The counsel for the Respondent emphatically contends that the management's policy of limiting overtime to 50 hours per month was not properly implemented in practice. Despite the policy, Chowkidars were made to work excessive and unreasonable hours, particularly on holidays that too without being paid adequate or full compensation. When Chowkidars reported for duty after school hours (on the afternoon before a Sunday or gazetted holiday), they were required to remain on duty until school resumed the following working morning, amounting to continuous duty well in excess of 36 to 38 hours, compared to the prescribed eight hours for a regular employee.

18. He concludes his arguments by submitting that the compensation paid to the workmen for holiday duty was arbitrary, disproportionate, and did not



represent full reimbursement for the extra hours worked. The workmen received only a fraction of what they were rightfully entitled to in lieu of the additional work they performed.

ISSUES FOR CONSIDERATION

19. Having heard the parties at length, the following principal issues arise for consideration in the present petition:

- (i) Whether the Industrial Tribunal acted within the scope and mandate of the remand order dated 07.12.2005;*
- (ii) Whether the impugned award violates the principles of natural justice;*
- (iii) Whether the Tribunal was competent to modify the earlier award in the manner done; and*
- (iv) The scope of interference by this Court under Article 226 in the present facts and circumstances.*

ANALYSIS AND FINDINGS

20. The narrow controversy that arises for consideration, upon a holistic reading of the pleadings, noting rounds of litigation and submissions advanced by the parties, does not pertain to the entitlement to relief per se. It neither involves the determination of any substantive right such as regularization of service, accruing in favour of the chowkidar, nor does it fasten any substantial or severe liability upon the management. The issue, in essence, is circumscribed to the limited question of payment of overtime wages and the determination of prescribed working hours and its strict adherence thereto.



21. It is pertinent to note that the management has, at no stage, denied its obligation to compensate the chowkidar for overtime or additional work performed. The dispute, however, is confined to the quantification of such overtime, which, in substance, also constitutes the core grievance raised by the respondents herein.

22. In order to adjudicate the aforesaid issue(s) in a comprehensive and structured manner, this Court deems it appropriate to examine the relevant aspects separately.

SCOPE OF REMAND AND COMPETENCE TO MODIFY

23. The first and most fundamental contention of the Petitioner is that this Court's order dated 07.12.2005 was limited to the issuance of formal directions and did not authorise the Industrial Tribunal to pass a fresh or substantive award modifying the earlier award dated 05.04.2003. This Court is unable to accept this contention.

24. The order dated 07.12.2005 set aside the answer to the second term of reference which concerned the overtime entitlement of Chowkidars on the ground of internal inconsistency in the findings and remanded the matter to the Industrial Tribunal for issuance of "*appropriate directions in terms of the findings already recorded.*" The import of this direction is plain and unambiguous. The Tribunal was required to translate the findings already on record into concrete, operative directions for the parties. To do this meaningfully, some modification of the earlier award was not only permissible but was the direct and inevitable consequence of the remand which in normal circumstances shall not be subject to review unless a perverse and grave illegality is apparent prima facie, which in no way is the



case here.

25. Additionally, it would be wholly incongruous to hold that this Court, having identified an inconsistency in the overtime-related findings and set aside that portion of the award, expected the Tribunal to do nothing more than restate existing conclusions without giving them any enforceable form. Such an interpretation would render the remand order nugatory and defeat its very purpose, which could neither have been, nor can it reasonably be inferred to have been, the intention of this Court.

26. The Petitioner's further argument that the award dated 05.04.2003 having been set aside to the extent indicated, the Tribunal could not modify it but was required to proceed afresh is similarly untenable. The setting aside was expressly limited in scope, confined only to the answer to the second term of reference regarding overtime. The Tribunal was not required to start de novo. It was required to give appropriate directions on the specific overtime question, and it was fully competent to do so.

27. The present petition, filed by the management to challenge an award of an Industrial Tribunal, which was passed in compliance with this Court's own direction, is on a shaky footing from the outset. The management, which succeeded on the first term of reference and never challenged that part of the order, cannot now turn around and assert that the order of this Court dated 07.12.2005 which is final and binding was bad in law. The management is bound by the findings of this Court. It cannot collaterally attack the High Court's order through a challenge to the Tribunal's compliance thereof.



NATURAL JUSTICE

28. The Petitioner contends that the Tribunal violated the principles of natural justice by passing the award on the very first date fixed for directions, without giving MCD an opportunity to make submissions or lead evidence.

29. This Court does not find merit in this contention. The questions of fact regarding overtime entitlement had already been conclusively determined by this Court in W.P.(C) No. 20710/2005. The scope of the proceedings before the Tribunal on remand was not to re-open or re-agitate those findings. It was rather limited to translating those findings into operative directions. The opportunity to contest the merits had been fully availed in the earlier round of proceedings. Requiring the Tribunal to hear fresh arguments on questions already decided would have been contrary to the scope of the remand and would have amounted to a re-hearing that was neither authorized nor warranted. In any event, the Tribunal was bound by the earlier determination and was not empowered to revisit the same, the issues being clearly hit by the principles of *constructive res judicata*.

30. That said, this Court notes the broader principle underlying the grievance. The management's concern that the procedural pace denied it a meaningful opportunity to address the precise form of the directions is acknowledged. However, in the present case, given that the findings of this Court were clear and the Tribunal's task was ministerial in nature i.e. to give effect to those findings, the absence of elaborate submissions at that stage does not vitiate the award on the ground of violation of natural justice therefore, the contention of violation of principal of natural justice does not stand and is accordingly rejected outrightly.



SCOPE OF INTERFERENCE UNDER ARTICLE 226: THE SUBSTANTIVE MERITS OF THE AWARD

31. Now, advertent to the scope of interference by this Court with the Award passed by the learned Tribunal, it is well-settled that the jurisdiction of this Court under Article 226 of the Constitution of India is supervisory and not appellate in nature. Consequently, this Court neither can, nor ought to, lightly interfere with findings of fact recorded by the Tribunal, particularly where such findings are based on appreciation of evidence. Interference is warranted only in exceptional circumstances such as where the findings are perverse, suffer from patent illegality, or are rendered in violation of principles of natural justice. In the absence of such infirmities, re-appreciation of evidence or substitution of the Tribunal's view with that of this Court would be impermissible in exercise of writ jurisdiction.

32. Therefore, even if this Court were to look beyond the procedural objections and examine the matter on substantive merits, the impugned Award does not warrant interference and stands on firm legal footing. A holistic appraisal of the record reveals that, although the management ostensibly provided for overtime wages and compensatory leave through its policy dated March 1997 (whereby overtime was capped at 50 hours per month with effect from 01.01.1997), the said safeguards were not effectively or consistently implemented in practice. The material on record indicates that the protections so envisaged were, in substance, rendered illusory, as the workmen were required to perform duties in excess of prescribed limits without corresponding and adequate compensation.



33. As submitted by the learned counsel for the Respondents, and notably not disputed by the Petitioner, the working conditions of Chowkidars present a striking picture viz when a school has a holiday, whether a Sunday or a gazetted holiday a Chowkidar is required to report for duty from the afternoon of the preceding day (when the school closes) and continue without break until the school reopens on the next working morning. This results in continuous duty of no less than 36 to 38 hours at a stretch. By contrast, an employee is expected to work not more than 8 hours in a day. If a Chowkidar works for more than 8 hours in a single day, the excess must constitute overtime by any reasonable measure of the law.

34. The Petitioner has itself stated that its policy of limiting overtime to 50 hours per month was framed in conformity with the policy of the Directorate of Education, Government of NCT of Delhi. That policy, as adopted, did not contemplate, nor could have done so, that Chowkidars would be compelled to work 20-hour shifts without full remuneration. The management's attempt to invoke the 50-hour cap as a ceiling on overtime liability in such circumstances is not persuasive. This Court is of the view that a cap designed to regulate routine overtime cannot be pressed into service as a shield against compensation for extraordinary working hours particularly where, as in the present case, those hours arise not from any voluntary act of the workman but from the very nature and operational demands of the post or of the management in many cases.

35. Moreover, the record reveals that while the management did pay some compensation to Chowkidars for holiday duty, such payment represented only a fraction of what they were rightfully owed. Partial payment, made arbitrarily and disproportionately, cannot substitute for lawful compensation.



Payment must be rational, proportionate, and not arbitrary. The compensation given to Chowkidars for their holiday-duty hours did not meet any of these standards.

36. There is also a larger principle of industrial justice at stake. The principle of equal pay for equal work is a well-recognised constitutional imperative. The management has also acknowledged that it pays all categories of employees whether regular, temporary, or daily-wage equally in terms of base remuneration, on account of the nature of their employment being the same. If that is so, the same parity must apply to overtime and holiday compensation. It cannot be that a regular employee receives full overtime pay while a temporary or daily-wage employee performing an identical function receives a lesser or negligible amount.

37. This Court is, accordingly, of the considered view that the Chowkidars are, at the very least, entitled to payment of overtime wages, if not to any higher or additional relief, for every hour of work performed beyond eight hours in any given day, irrespective of whether that day is a regular working day, a Sunday, or a gazetted holiday. They are further entitled to receive full and proportionate compensation for work done on holidays which must not be limited to a quarter or half day's payment but must correspond to the actual hours worked.

38. Additionally, where compensatory leave is provided in lieu of holiday duty, such leave must cover at least a full day, and the workman shall not be compelled to work the entirety of a re-joining day or holiday as if on regular duty; and above entitlements must apply equally to all Chowkidars, regardless of the nature of their employment viz whether regular, temporary, daily-wage, or contractual since they perform work of an identical nature.



39. In light of the above, the management's policy of capping overtime at 50 hours per month, to the extent it operates as a bar on legitimate overtime claims arising out of the working conditions described above, cannot be given effect. No policy framed by an employer can override the statutory and constitutional rights of a workman to be compensated for work actually performed. This position was rightly arrived at by the Tribunal in the impugned award.

40. The direction for payment of 9% interest on the awarded amounts is also upheld. The workmen have been engaged in this litigation since 1995. A period of over a decade has passed. During this time, they have been deprived of monetary benefits to which they were lawfully entitled. Interest in such circumstances is not a penalty it is restitution.

41. In view of the foregoing, this Court issues the following directions:

(i) The management (MCD) shall be liable to pay to the Chowkidars overtime wages for all work performed **beyond eight hours in any day**, in accordance with applicable law. There shall be no bar or ceiling on such payment on account of the management's internal policy.

(ii) Chowkidar along with other Class-IV employee shall be entitled to one day weekly off in a week, which can be on any day of the week, i.e., out of seven days of the week, Chowkidar/ Class-IV employee shall be asked to work only for six days. If a Chowkidar/ Class-IV employee is asked to perform his duties on **all seven days, either compensatory leave or overtime should be provided for the work on official off.**

(iii) Where compensatory leave is provided in lieu of duty performed



on a holiday, it must be a full day's leave. A Chowkidar/ Class-IV employee returning from holiday duty shall not be required to work a full day on the day of re-joining. The benefit of such rest must be real and not illusory.

(iv) There shall be no administrative ceiling or management policy that acts as a bar to the payment of overtime wages for work actually and verifiably performed by a workman beyond the prescribed working hours. Any existing policy to that effect, insofar as it limits or bars legitimate overtime claims, is not to be given effect.

(v) The compensation for extra work, including overtime and duty performed on a holiday, shall be the same for all Chowkidar/ Class-IV employee, irrespective of the nature of their employment. Equal work shall entail equal compensation.

(vi) All 'Leave Rules' and 'Gazetted Holidays' as per rules shall be applicable to Chowkidar/ Class-IV employee, apart from one day weekly off.

(vii) The benefits awarded by the impugned award dated 10.01.2006 shall be released to the eligible workmen within a period of eight weeks from the date of this judgment, along with interest at the rate of 9% per annum from the date the amounts became due.

CONCLUSION

42. For all the reasons set out above, the present writ petition is disposed of. The impugned award dated 10.01.2006 passed by the Industrial Tribunal-III, Karkardooma Courts, Delhi, is upheld in its entirety, subject to the additional directions issued by this Court hereinabove.

43. It is clarified that the directions contained in this judgment shall form



part of and be read along with the award dated 05.04.2003 as modified by the award dated 10.01.2006.

44. There shall be no order as to costs.

SHAIL JAIN, J

APRIL 30, 2026/HP