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**(2007) 03 DEL CK 0233**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No's. 166, 524, 527, 531, 761, 2379, 7675 of 2000, 6993 and 7530 of 2001, 148 of 2002 and 5821 of 2003

M.C.D.

APPELLANT

Vs

Mam Baksh and Others

RESPONDENT

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**Date of Decision :** 02-03-2007

**Acts Referred:**

**Citation :** (2007) 140 DLT 295

**Hon'ble Judges :** Hima Kohli, J

**Bench :** Single Bench

**Advocate :** Amita Gupta, for the Appellant; None, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Hima Kohli, J.—All these writ petitions are taken up for final hearing and disposal by passing a common order, as learned Counsel for the petitioner stated that the issues involved are common. For the sake of convenience, facts of WP(C) No. 166/2000 are noted.

2. The present writ petition has been filed by the petitioner MCD praying inter alias for setting aside the award dated 31st May, 1999 passed by the Presiding Officer, Industrial Tribunal (for short 'the Tribunal') in ID No. 183/1994, whereunder it has been ordered to place the respondent workman (hereinafter referred to as 'the workman') in the pay scale of Rs. 260-400/- with effect from 1st April, 1979, revised from time to time, within a period of three months and make the payment of arrears within a period of three months thereafter, where after the workman was entitled to claim interest @ 12% p.a. on the amount found due and payable, till the date of payment.

3. Vide order dated 19th January, 2000, the operation of the impugned award was stayed.

4. In a nutshell, the facts of the case are that the workman was employed with the petitioner on the post of Carpenter on daily/casual basis with effect from

17th July, 1972, and that his services were regularized by the petitioner on the post of Carpenter in the pay scale of Rs. 210-270/- with effect from 1st April, 1979. After a period of more than 12 and a half years, vide letter dated 26th November, 1991, the workman sent a demand notice to the petitioner claiming entitlement to receive the pay scale of Rs. 260-400/-. Pursuant thereto, an industrial dispute was raised and was referred for adjudication to the Tribunal vide Notification dated 7th June, 1994. The terms of reference were as follows:

Whether Shri Man Baksh Carpenter is entitled to pay-scale of Rs. 260-400 (Revised Rs. 950-1500) instead of Rs. 210-270 (Revised Rs. 800-1150) and if so, from which date and what directions are necessary in this respect?

5. The workman filed a statement of claim which was contested by the petitioner not only on the ground that the same was highly belated, but also on merits.

6. After the pleadings were completed and issues were framed, documents were placed on the record by both the parties and evidence was led. Upon examining the documents proved on record by the workman, which were not disputed by the petitioner, the Tribunal arrived at a conclusion that the post of Carpenter was skilled and carried the pay scale of Rs. 260-400/- with effect from 1st January, 1973 and as the workman joined the petitioner as a Carpenter, though on muster roll on 17th July, 1972 and was regularized with effect from 1st April, 1979 he ought to have been given the pay scale of Carpenter as revised from time to time from the date of his regularization, i.e. with effect from 1st April, 1979. To arrive at the aforesaid conclusion, reliance has been placed in the impugned award on an Office Order dated 12th July, 1982 passed by the petitioner, the relevant portion of which is reproduced hereinbelow:

The Commissioner, M.C.D. exercising the powers of the corporation, vide decision No. 23/10/DW/Corp.dated 11.6.1982 has been pleased to approve of implementation of award given by the Board of Arbitration (J.C.M.) revising the pay scale of skilled workers of the following categories from Rs. 260-350 to Rs. 260-400 w.e.f.1.1.1973, notionally to the categories of skilled workers, as state below, in position on or before 1.3.1973.

S. No. Category 1. Mason 2. Carpenter xxxx The actual benefit in terms of arrears of pay etc. would accrue to them only w.e.f.1.3.1973. This benefit may also be given to such Municipal employees who have entered in municipal service after 1.3.1973.

Asstt. Commissioner (Engg.)

7. Learned Counsel for the petitioner contended that the conclusion arrived at in the impugned award is contrary to the records and is on account of misreading of the Office Order dated 12th July, 1982, referred to and relied upon by the Tribunal to arrive at the conclusion that he did. In support of her argument, she referred to the Recruitment Regulations for the post of Carpenter which stipulate that the pay scale of a Carpenter, which is a class-C post, is Rs. 210-270 and the

method of selection is by direct recruitment. Further, the educational qualification required for direct recruits is primary pass from a recognised Board or equivalent, and general suitability for the job. It was submitted that the next higher post is that of a Senior Carpenter, a category C post. The method of recruitment to the said post is by promotion, failing which, by direct recruitment and in case of promotion, the same is from the post of Carpenter with three years" regular service in the grade. The pay scale attached to the said post is Rs. 260-360/-. The educational and other qualification required for direct recruits is a certificate in carpentry from ITI or a recognised institution or equivalent and two years" experience in the profession. In the case of appointment by promotion, the grade from which promotion is to be made is that of Carpenter, with 3 years regular service in the grade.

8. It was submitted on behalf of the petitioner that the revision as ordered in the Office Order dated 12th July, 1982 pertained to revision in the pay scale of "skilled workers" of various categories totaling to 13 in number, including the category of Carpenter, from Rs. 260-350 to Rs. 260-400 with effect from 1st January, 1973. Thus, it was submitted that the said revision is not from the initial pay scale and that the persons recruited to the post of Carpenters were not entitled to claim enhanced pay scales as they did not fall in the category of "skilled workers" which was the prescribed qualification for being entitled to revision in pay scale.

9. It was submitted by counsel for the petitioner that the workman was only a casual worker with the petitioner right up to 1st April, 1979 when he was regularized in the post of Carpenter in the pay scale of Rs. 210-270/-. He accepted the said regularization and continued to work in the said post right up to November, 1991. After a period of 12 and a half years, he raised a dispute for the first time with regard to the entitlement of pay scale of Senior Carpenter in terms of the demand notice dated 26th November, 1991. It was further submitted that in the year 1991 when the workman raised the demand in question, he was well aware of the fact that the said Office Order 12th July, 1982 was not applicable to him because he was not working at the post of Senior Carpenter but was working as a Carpenter and though the category mentioned in the said Office Order at S. No. 2 refers to "Carpenter", the said Office Order read in conjunction with the Recruitment Regulations for the post of Carpenter, make it evident that the revision in the scale of pay was applicable only to `Senior Carpenter" and not to `Carpenter" as the Recruitment Rules of Carpenters did not prescribe any educational and other qualifications so as to categorise them as "skilled workers", whereas the requirement of the said Office Order was that the award given by the Board of Arbitration revising the pay scale of various categories from Rs. 260-350 to Rs. 260-400 with effect from 1st January, 1973 was extended notionally to the categories of skilled workers alone, in such position on or before 1st March, 1973.

10. It was further submitted that admittedly the workman remained a casual

worker right up to 1st April, 1979 as he was regularized only on 1st April, 1979. Consequently, he did not have any essential qualifications to entitle him to claim to be a skilled worker at the relevant time. The said requirement of being a skilled worker was essential only in the case of a Senior Carpenter and not in the case of a Carpenter, to which post the workman was regularized. Thus, the benefit under the Office Order in question could not be granted to the respondent.

11. None appeared on behalf of the workman though the matter has remained on the regular board since January, 2007. However, reply to the writ petition was filed in May, 2000, wherein one of the pleas taken by the respondent workman was that the petitioner herein had, in similar cases released the benefits due to some other employees applicable as from the date of their regularization, and thus the workman was also entitled to the same relief. Counsel for the petitioner, however, denied the said plea and submitted that as the award was challenged by the petitioner with respect to various workmen from time to time and even belatedly in some cases, the respondent has taken such a plea.

12. On merits, it was stated in the reply that as there was no mention of the term 'skilled' against the post of Carpenter listed at item No. 2 in the Office Order dated 12th July, 1982, the workman was entitled to the benefit of the aforesaid Office Order. It was further submitted that the impugned award was justified and there was no illegality therein and thus the same did not deserve to be interfered with.

13. I have heard the counsel for the petitioner and have also perused the records.

14. The entire relief granted to the workman in the impugned award hinges on the interpretation of the Office Order dated 12th July, 1982 which has been relied upon by both the parties, and by the Tribunal so as to draw the conclusion as arrived at in the impugned award. A perusal of the said Office Order reflects that it conveyed approval of the Commissioner, MCD for implementation of the award given by the Board of Arbitration, revising the pay scale of the skilled workers of various categories, numbering thirteen (13) in total, from Rs. 260-350 to Rs. 260-400 with effect from 1st January, 1973 notionally. A careful reading of the aforesaid Office Order makes it apparent that for being entitled to claim revision in pay scale, the primary requirement was that the workers in question ought to have been skilled workers. The Recruitment Regulation for the post of Carpenter requires no essential qualification in terms of specific educational qualification for being appointed to the post of Carpenter, so as to qualify the employee as a skilled worker. Instead, the Recruitment Regulation for the post of Carpenter only stipulates that the candidate in question ought to be a primary pass from a recognised Board or equivalent, with a general suitability for the job. The pay scale for the post of Carpenter is Rs. 210-270/-.

15. In direct contradistinction to the said Recruitment Regulation for the post of Carpenter, is the Recruitment Regulation for the post of Senior Carpenter, the next higher scale, for which the method of recruitment is by promotion, failing

which by direct recruitment. The essential qualifications for direct recruits includes a certificate in carpentry from ITI or a recognised institution or equivalent and two years of experience in the profession. This was a mandatory requirement for a candidate to qualify for being appointed to the post of Senior Carpenter as a skilled worker. It appears that the said distinction was overlooked while passing the impugned award, as a result of which the workman was held entitled to a revision of pay scale from Rs. 260-350/- to Rs. 260-400/- with effect from 1st January, 1973.

16. There is no denial to the fact that the workman was working as a casual daily wage worker from 1972 and was only regularized with effect from 1st April, 1979 at the post of Carpenter, in the pay scale of Rs. 210-270/-. He continued working in the said pay scale for over 12 years. As late as in the year 1991, he chose to raise a demand on the petitioner claiming entitlement to pay scale of Rs. 260-400 from the date of his regularization.

17. It cannot be overlooked that reference in the Office Order dated 12th July, 1982 was to 'skilled workers' in various categories who were drawing wages in the pay scale of Rs. 260-350/- which was proposed to be revised to Rs. 260-400/-. Thus even if there was some ambiguity in specifying the categories of skilled workers with reference to the post of Carpenter, the said Office Order read in conjunction with the Recruitment Regulation for the post of Senior Carpenter makes it evident that the same was attracted only to the post of Senior Carpenters and not to the post of Carpenters. The said conclusion is also fortified by the fact that as against the pay scale of Rs. 210-270/- prescribed in the Recruitment Regulation for the post of Carpenters, the pay scale prescribed for the post of Senior Carpenters is Rs. 260-360/-. Hence for availing the benefit of revision of pay scale in terms of the Office Order in question, the concerned skilled workers were also expected to be drawing wages in the pay scale of Rs. 260-350/-, which pay scale though not identical to the pay scale of a Senior Carpenter, has greater proximity to the post of Senior Carpenter (Rs.260-360/-), as against the post of Carpenter (Rs.210-270/-).

18. In view of the aforesaid discussion, the conclusion arrived at in the impugned award is found to be erroneous and based on a misreading of the Office Order dated 12th July, 1982. The respondent workmen were not entitled to any relief. The writ petitions are Therefore allowed and the impugned awards are set aside.

19. There shall be no order as to costs.