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Mcd vs.rajpal and 232 Ors.

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Court : Delhi

Decided On : Oct-09-2018

Appellant : Mcd

Respondent : Rajpal and 232 Ors.

Advocate for Def. : Mr. Varun Prasad

Advocate for Pet/Ap. : Ms. Biji Rajesh

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

27. h September, 2018 Date of decision:

9. h October, 2018 + W.P.(C) 170/2011 MCD Through: Ms. Biji Rajesh, Adv. .....

... Petitioner
versus RAJPAL AND232ORS. .

... RESPONDENTS
Through: Mr. Varun Prasad, Adv. CORAM: HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT
1 The issue involved in the present writ petition relates to parity of scales of pay of Chowkidars/Security Guards posted in the Health Department of the Municipal

Corporation of Delhi (hereinafter referred to as the MCD), vis--vis Chowkidars posted in other departments of the MCD. The dispute arose because Chowkidars/ Security Guards posted in the Health Department of the MCD, were being paid 2610-4000 per month, whereas Chowkidars/Security Guards in other departments of the MCD were paid 2500-3200. The learned Industrial Tribunal (hereinafter referred to as the learned Tribunal) has, vide the impugned Award dated 11th January, 2010, held that Chowkidars/Security Guards, who were posted in other departments of the MCD, were entitled to be paid the scale of pay granted to Chowkidars/Security Guards posted in the Health W.P.(C) 170/2011 Page 1 of 28 Department, i.e. 2610-4000. Reliance has been placed, for the said purpose, on the judgment of this Court in Municipal Corporation of Delhi v. Ram Kishan, (2007) 98 DRJ254(DB), which affirmed the judgment dated 16th February, 2006, passed by the learned Single Judge in WP(C) 1610/2005 and connected cases (Ram Kishen v. Commissioner, MCD). Arrears, however, have been awarded, by the learned Tribunal, only for the period commencing 1st January, 2002.

2. The term of reference, in the order of the appropriate Government referring the dispute for adjudication to the Labour Court, read thus:

3. (a) Whether workmen Sh. Raj Pal S/o Sh. Ram Sahai and 232 other Chowkidars shown in Annexure A in the pay scale of 2550-3200 are performing the same duty of watch and ward as are being performed by Security Guards, working under the Health Department of MCD; and if answer to question (a) is in affirmative (b) whether demand of Chowkidars for the pay scale of 2610-4000 is justified; and if yes, to what relief are they entitled?. The workmen, in their Statement of Claim, submitted that Chowkidars were performing the same duty as security guards, irrespective of their site of posting but that Chowkidars/Security Guards posted in the Health Department were paid a higher scale than Chowkidars/Security Guards posted elsewhere in the MCD (2550- 3200, vis--vis 2610-4000). That their duties were identical, it was submitted, stood settled by the judgment of the Division Bench of this Court in Ram Kishan (supra) which also directed the MCD to fix all of them in the same pay scale, i.e. 210-250 (pre-revised), with effect from 1st January, 1986. This decision, as already noted, was rendered W.P.(C) 170/2011 Page 2 of 28 by a Division Bench of this Court

exercising Letters Patent Appellate jurisdiction, and upheld the judgment, of learned Single Judge, rendered on 20th February, 2006, in a batch of writ petitions, headed by Ram Kishen v. M.C.D. [WP (C) 1610/2005]..

4. The evidence 4.1 The respondent led the evidence of four witnesses, namely WW-1 B.K. Prasad, WW-2 Om Prakash, WW-3 Ramesh Kumar and WW-4 Chander Singh, whereas the petitioner led the evidence of only one witness, namely MW-1 P.K. Banerjee. 4.2. WW-1 B.K. Prasad, who was the President of the MCD General Mazdoor Union, led his evidence by way of an affidavit which is exhibited as Ex.WW-1/A. He deposed, in the said affidavit that Security Guards and Chowkidars were performing the same duties of watch and ward, under different establishments of the MCD, but that Security Guards/Chowkidars working in the Health Department of the MCD were being paid a higher pay of 2610-4000, whereas other Chowkidars performing the same watch and ward duties, in other departments, were being paid 2550-3200. He deposed, further, that Chowkidars and Security Guards were performing the same work, and the facts of the case were identical to those which obtained in Ram Kishen (supra). He also deposed that, vide Office Order dated 26th September, 2006, the MCD had implemented the said judgment, equalising the pay scales of Chowkidars and Security Guards. WW-1 further testified that the nature of duties, responsibilities, working W.P.(C) 170/2011 Page 3 of 28 hours and qualification of Chowkidars, Gunmen and Security Guards were the same, and that all of them were essentially recruited for protecting and securing the assets of the MCD. He also deposed that the posts were interchangeable. 4.3 In his examination-in-chief, WW-1 B.K. Prasad proved his affidavit, as well as eight documents, exhibited as Ex.WW-
to WW-1/8, filed therewith. 4.4 In cross-examination, WW-1 denied the suggestion that, in order to be recruited as Security Guard/Gunman, one had necessarily to be an ex-serviceman holding at least the rank of Naik. He admitted the fact that none of the respondent-workmen was an ex-serviceman, as also the fact that none of them were parties in Ram Kishen (supra). He denied the suggestion that the respondents had never been posted in the Health Department in place of Security Guards/Gunmen, or that Gunmen/Security Guards were posted at highly sensitive locations involving heavy cash transactions. 4.5 WW-2 Om Prakash also filed his examination-in-chief by way of affidavit, in which he deposed that he was

working as a Chowkidar with the MCD, and that Security Guards and Chowkidars were performing the same duty of watch and ward under different establishments of the MCD. He further deposed that, in the MCD, a higher scale of 2610-4000 was being paid to Chowkidars and Security Guards posted in the Health Department, whereas Chowkidars in other departments, who were doing the same work of W.P.(C) 170/2011 Page 4 of 28 watch and ward, were paid a lower scale of 2550-3200. Chowkidars and Security Guards in the MCD, he deposed, did the same work. As such, he deposed that he and his colleagues, who were working as Chowkidars, albeit in other departments of the MCD, were also entitled to be paid 2610-4000. 4.6 WW-2 has proved the above affidavit in his examination-in- chief, which was, accordingly exhibited as Ex.WW-2/A. He affirmed that the said affidavit was true and correct. 4.7 In cross-examination, WW-2 Om Prakash accepted that he had never worked in the Health Department of the MCD and had never been posted as a Security Guard. 4.8 The evidence of WW-3 Ramesh Kumar and WW-4 Chandan Singh, who also filed affidavits by way of their examination-in-chief, and, were cross-examined, was identical to that of WW-2 Om Prakash, and need not, therefore, be set out in detail. It may be mentioned, however, that in his cross-examination, WW-4 Chandan Singh asserted that he was an ex-serviceman when he applied for the post of Chowkidar, though he had never worked as Security Guard. 4.9 P.K. Banerjee, the Assistant Director (Horticulture) of the MCD, deposing as MW-1, also filed his examination-in-chief by way of affidavit, in which he emphasised the fact that the post of Security Guards/Gunmen was a selection post, for which one was required to be a middle school passed and a Lance Naik or other equivalent ranks W.P.(C) 170/2011 Page 5 of 28 of the defence forces, as well as an ex-serviceman, in the case of direct recruits, whereas no such qualification was required to be possessed by Chowkidars. He also sought to depose that there was a huge difference in the nature, duties and responsibilities of the said posts, inasmuch as Security Guards/Gunmen were posted at sensitive places, such as the Municipal Treasury, involving handling of large amounts of cash, whereas Chowkidars were posted in parks and other such locations. He admitted to distinguish the judgment of this Court in Ram Kishen (supra) on the ground that the workmen in the said case had been recruited through the Employment Exchange with experience as ex-servicemen and were, therefore,

entitled to claim parity with Gunmen/Security Guards in the Health Department. As against this, he asserted that the respondents in the present case were engaged on daily wages as Chowkidars, and were never recruited as Security Guards/Gunmen. 4.10 In his examination-in-chief, MW-1 P.K. Banerjee proved the aforementioned affidavit, which was exhibited, accordingly as Ex.MW-1/A. Nothing substantial emerged from his cross- examination.

5. The Judgment in Ram Kishen (supra) 5.1 The petitioners in Ram Kishen (supra) were ex-servicemen, who were recruited as Security Guards/Gunmen through the Employment Exchange. It is noted, in para 2 of the judgment of the learned Single Judge that, initially, many of the petitioners in that case worked in the Health Department and were, later, posted in the W.P.(C) 170/2011 Page 6 of 28 Caretaker Department and designated as Chowkidars/Gunmen. It was noted that 79 posts of Security Guards/Gunmen, to be deployed in the health wing in various hospitals and health establishments of the MCD, had been created. The personnel inducted in these posts had qualifications identical to those of the petitioners before this Court. The judgment of the learned Single Judge also notes that the postings were interchangeable, as Security Guards in the Health Department were sent to work in the Caretaker Department and other units of the MCD. 5.2 The case of the petitioners, i.e. Ram Kishen etc., proceeded on the premise that the situs of posting could not be a factor to discriminate in the matter of pay scales. In other words, the contention was that, by whatsoever name they may have been called, Chowkidars/Security Guards, posted in other departments of the MCD, were entitled to parity of pay with Chowkidars/Security Guards posted in the Health Department. The controversy, therefore, revolved, as in the present case, on whether disparity in pay, on the sole basis of the situs of posting, within the establishment of the MCD, was constitutionally permissible or not. 5.3 The following passages, from the judgment of the learned Single Judge in Ram Kishen (supra), deserves to be extracted: 1. The petitioners claim a direction to the respondent, (hereafter MCD) to fix them in the initial pay-scale of Rs. 210-250, being given to security guards/ personnel working in the health wing. They invoke the principle of equal pay for equal work.

2. The undisputed facts are that the petitioners, all of W.P.(C) 170/2011 Page 7 of 28 the whom are ex-service men having served with the armed forces of the Union, sought employment with the MCD, which had requisitioned names from the Employment Exchange. The MCD had sought to fill the post of Security guards/gunmen. It appears that initially many of them worked in the health department or wing of the MCD; later they were posted in the Care-taker department, and designated as Chowkidar/gunman. Their pay was fixed in the grade of Rs. 196-232. The petitioners were appointed in 1984-86. xxx 6. The precise content of the right to equal pay for equal work has been explained in several decisions of the Supreme Court. In Jaipal and others etc. v. State of Haryana and others etc, (AIR 1988 SC1504:

1988. Lab IC1673) a public employer, like the state, was held to be a under a constitutional obligation to ensure equal pay for equal work, where two sets of employees-discharged similar responsibilities under similar working conditions. In, Dhirendra Chamoli and another v. State of Uttar Pradesh, (1986) 1 SCC637 it was held that casual workers could not be denied same emoluments and benefits as admissible to the temporary employees on the ground that they had accepted the employment with full knowledge of their disadvantage. In Grih Kalyan Kendra Workers' Union v. Union of India and others (1991) 1 SCC619 though no discrimination was found but the principle of equal pay for equal work was recognized where all were placed similarly and discharging same duties and responsibilities irrespective of casual nature of work. This right had been held to have assumed status of a fundamental right in service jurisprudence having regard to constitutional mandate of 'equality' in Articles 14 and 16. In Daily Rated Casual Labour through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others, (1988) 1 SCC122 All these decisions were noticed, and applied, in the judgment reported as State Of West Bengal v. Pantha Chatterjee 2003-(6)-SCC469.

7. The Supreme Court has also ruled that if there are differences based on qualifications, rules, or conditions of experience, etc, the doctrine of equal pay cannot be applied by the courts. The nature of work may be more or less the same but scale of pay may vary based on academic qualification or W.P.(C) 170/2011 Page 8 of 28 experience which justifies classification. The principle of equal pay

for equal work cannot be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. (Ref. Mewa Ram Kanojia v. All India Institute of Medical Sciences and others (1989) 2 SCC235, V. Markendeya and others v. State of Andhra Pradesh and others [(1989) 3 SC191 8. In this case, both categories of employees are under the same employer; they perform similar duties; they are recruited through a constitutionally sanctioned process, and there is interchangeability of duties. Yet, they are not given parity in pay scales. The only difference pressed home to justify this disparity is that the security guards in the health department perform duties that are different. No attempt was made to show how the duties were different; apart from the slight variation in nomenclature, no document was relied upon to show differences in qualifications, experience, or job content, or training or achievements. Indeed, the essential function of both kinds of employees is to protect and secure the MCDs assets. The doctrine of equal pay for equal work is a facet of 9. equality. If therefore, the state seeks to escape its application, the differentia has to be explained. This differentia is itself based upon the theory of classification which enables the State to treat two seemingly similar persons, objects or classes or persons, differently. If the points of difference (intelligible differentia) are reasonable, and have a rational or logical co- relation with the object sought to be achieved by the policy or legislation the classification is said to be reasonable.

10. In Roop Chand Adlakha v. Delhi Development Authority AIR 1989 SC307 the Supreme Court emphasized that the theory of classification, if pressed too far, could destroy the guarantee of equality itself: that security personnel had superior in which such differentia is built in, the process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognise a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the W.P.(C) 170/2011 Page 9 of 28 and unknown process cannot in itself generate or aggravate the inequality. The process cannot merely blow up or magnify insubstantial or microscopic differences on merely meretricious or plausible differences. The overemphasis on the doctrine of classification or any anxious and

sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed a classification rendering the precious guarantee of equality a mere rope of sand.

20. To overdo classification is to undo equality. The idea of similarly or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, be themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification. reason for 11. The attempts of MCD to justify the differential treatment, and the classification, exemplify precisely the over- classification which renders the guarantee of equality into a chimera, a mere rope of sand. Besides the classification itself, there is no rationale offered. I am of the view therefore, that the petitioners are entitled to the doctrine of equal pay for equal work. 5.4 The said decision of the learned Single Judge was carried in appeal, to the Division Bench, which dismissed the appeal vide judgment dated 29th August, 2006, which deserves to be extracted, in extenso, thus: W.P.(C) 170/2011 Page 10 of 28 in in This appeal is directed against the judgment dated 20.2.2006 of the learned Single Judge allowing the Writ Petition (C) 1610-1618/2005 filed by the respondents herein and directing the appellant-Municipal Corporation of Delhi (MCD) to fix the respondents in the pay-scale (pre-revised) of Rs. 210-250, with effect from 1.1.1986, along with notional increments and fit them in the appropriate grade, after taking account revisions, etc. The respondents were also directed to be paid arrears, on the basis of such revised salary, for the period 1.4.2002 till the date of the judgment and the said directions were to be complied with within ten weeks.

2. The respondents, all of whom are ex-servicemen, were sponsored by the employment exchange for the post of the MCD Security Guards/Gunmen its health

department. They were first appointed the health department in the years 1984-1985 on an ad hoc basis on a pay scale of Rs. 196-232. Later, they were posted as Chowkidars/Gunmen in the caretaker department. By a resolution dated 17.5.1985 the Commissioner, MCD to create 79 posts of Security Guards/Gunmen in the pay scale of Rs. 210-250, plus allowances were an interchangeability of postings, i.e., the security guards in the health department could be sent to the caretaker department and other units of MCD. The respondents who were working as Chowkidars/Gunmen filed Writ Petition(C) 1610-1618 of 2005 in this Court praying that they be granted the pay scales fixed for the Security Guards/Gunmen, on the basis that they were performing identical duties. The learned Single Judge, after referring to the 3. judgments of the Hon'ble Supreme Court in Dhirendra Chamoli v. State of UP, (1986) 1 SCC637 Mewa Ram v. All India Institute of Medical Sciences, (1989) 2 SCC235and State of West Bengal v. Partha Chatterjee, (2003) 6 SCC469 came tithe conclusion that the respondents were entitled to the reliefs sought for. The learned Single Judge held as under: the proposal made by in approved. There was to be In this case, both categories of employees are under the same employer, they perform similar duties, they are recruited through a constitutionally sanctioned process and there is interchangeability of duties. Yet, W.P.(C) 170/2011 Page 11 of 28 they are not given parity in pay scales. The only difference pressed home to justify this disparity is that the security guards in the health department perform duties that are different. No attempt was made to show how the duties were different,; apart from the slight variation in nomenclature, no document was relied upon to show differences in qualifications, experience, or job content, or that security personnel had superior training or achievements. Indeed, the essential function of both kinds of employees is to protect and secure the MCD's assets. However, while allowing the writ petition, the learned Single Judge restricted the actual grant of arrears to the period from 1.4.2002 onwards since the respondents had approached the High Court only in the year 2005.

4. It requires to be first noticed that there is a delay of 154 days in filing the present appeal. The only explanation offered in the application for condonation of delay is to be found in para 5 which reads as under: That the impugned order was passed by this Hon'ble Court on 20.2.2006 and wherein the certified copies was obtained

by the previous counsel on or about 3rd March, 2006. Thereafter, the previous counsel for MCD informed the department about the passing of the said order and eve since of the intimation of the department that the impugned order has been passed, the department had no stone unturned in moving the file to the Legal Department as well as Finance Department, Caretaker Branch etc. and all these branches on account of pendency of work took little time to forward the file considering the issue involved in the present matter. As such that the delay of 154 days in filing the present appeal. 5. In our view, the above explanation is wholly vague and unsatisfactory and does not constitute a sufficient justification for condonation of delay of 154 days in filing of the present appeal. The appeal deserves to be dismissed on this ground alone.

6. Nevertheless, we have heard the submissions of Mr. Shivinder Chopra learned counsel for the appellant on merits W.P.(C) 170/2011 Page 12 of 28 that as well. He submitted that the learned Single Judge erred in coming to the conclusion that the essential function of both the respondents and the security guards were the same, that they performed similar duties and there was an interchangeability of their duties. He drew our attention to a chart showing the comparison of the recruitment rules for the posts of Chowkidar and Security Guard/Gunman. Mr. Chopra very fairly stated that this chart was not placed by the appellant before the learned Single Judge. Although this by itself is sufficient for us to not to permit the appellant to rely upon the said document, in the interests of justice, we examined it.

7. We find that the so-called differences sought to be pointed out by Mr. Chopra, as regards the educational qualifications and method of the recruitment in respect of the two posts are too superficial and insignificant to warrant any different treatment. There is also nothing to show that the duties of the two are not interchangeable. We may add that the respondents herein who are ex-servicemen are perhaps far better equipped and experienced to perform the essential functions of providing security to the assets of the Appellant- MCD than those who may have to be recruited as Security Guards/gunmen from the open market. We do not see any reason why the Chowkidars/Gunmen like respondents before us, should be treated any differently in the matter of pay scales from the Security

Guards/Gunmen.

8. In the circumstances, we are satisfied that no ground is made out to interfere with the impugned judgment of the learned Single Judge. Therefore, both on the grounds of delay as well as merits, this appeal is dismissed. (Emphasis supplied) 5.5 From a conjoint reading of the decisions of the learned Single Judge and Division Bench, in Ram Kishen (supra), it becomes apparent that, by whatever nomenclature they were designated, Chowkidars and Security Guards were doing similar duties, of watch and ward, and guarding the assets of the MCD. It also becomes W.P.(C) 170/2011 Page 13 of 28 apparent that their postings were interchangeable. Undoubtedly, one point of distinction, between the employees/workmen in Ram Kishen (supra) and those in the present case is that the former, were ex- servicemen, whereas the latter are not. This is an aspect which I shall address later in the course of this judgment.

6. The proceedings before the Industrial Tribunal and the impugned Award 6.1 In its written statement, the MCD raised the following contentions/objections: (i) The dispute was not properly espoused. (ii) No demand notice had been served on the petitioner. (iii) The dispute was barred by delay and laches. (iv) The posts of Gunmen/Security Guards and Chowkidars were different and distinct. Gunmen/Security Guards were posted at sensitive sites like the Treasury, etc., whereas Chowkidars were posted in parks and the like. (v) The petitioners in Ram Kishen (supra) had been recruited through the Employment exchange, had experience as ex-servicemen, and had the same qualifications. The petitioners, on the other hand, were transferred from the DDA and were regularised and granted the pay scale given to them in the DDA. They had no experience as ex-servicemen. W.P.(C) 170/2011 Page 14 of 28 (vi) As per the applicable Recruitment Rules, the essential qualification, for recruitment as Security Guard/Gunman, in the MCD, was a middle school pass, along with experience as Lance Naik in the Army or equivalent rank in the Defence Forces. He was also required to be an ex-serviceman and sponsored by the DDR Board of ex-servicemen Employment Exchange. 15% of the persons recruited were from paramilitary forces. As against this, no academic qualification was prescribed for the post of Chowkidar. The petitioners had initially been engaged as Chowkidars

on muster roll basis and were later regularised. They could not claim parity with Security Guards/Gunmen. 6.2 The Labour Court framed the following issues: (1) Whether the cause of the workmen has been duly espoused?. (2) Whether no demand notice has been served by the workman on the Management?. If so, its effect. (3) Whether the claim of the claimants is not maintainable due the Management?. laches as alleged by to (4) In terms of reference. 6.3 All four issues were decided, by the Labour Court, in the impugned Award, in favour of the respondent-workmen and against the petitioner-MCD. No serious objection has, however, been placed, to the findings regarding Issues (1) and (2) which, accordingly, need not detain the present judgment. W.P.(C) 170/2011 Page 15 of 28 6.4 On issues (3) and (4), the Labour Court held as under: (i) The plea of delay and laches could not sustain, in view of the two decisions, of this Court, exhibited as Ex WW-

and WW-1/2, which held that there was no difference in the manner of functioning of Chowkidars and Security Guards/Gunmen, and that they were entitled to parity of pay. Ex. WW-

and WW-1/2, it may be noted, were the judgments of the learned Single Judge, and of the Division Bench of this Court, in Ram Kishan (supra). (ii) On merits, it was found thus: (a) WW-2, WW-3 and WW-4, who were among the respondent-workmen, and were leading their own evidence, had deposed that they were working as Chowkidars, and that Security Guards and Chowkidars were performing the same duty of watch and ward, under different establishments of the MCD. (b) They further deposed that Chowkidars posted in the Health Department had also been granted the pay scale of 2610-4000. (ii) MW-1 PK Banerjee, on the other hand, reiterated the contents of the written statement. (iii) The Recruitment Rules revealed that the payscales of Gunmen and Chowkidars was the same, i.e. 196-232. W.P.(C) 170/2011 Page 16 of 28 (iv) No evidence, supporting the claim of difference in duties between Gunmen/Security Guards and Chowkidars, had been led by the management. The only difference appeared to be the Departments where they were deployed. In fact, the evidence indicated that Gunmen/Security Guards were both posted in Health Departments. (v) Ram Kishan (supra) covered the case. 6.5 The Labour Court, accordingly, decided the dispute in favour of the workmen, but limited arrears for the period commencing

from 1st January, 2002.

7. Submissions before this Court :

7. 1 Ms. Biji Rajesh, arguing for the petitioner, relied on paras 4 to 8 of the written statement, filed by the petitioner before the Labour Court, which read thus: 4.... It is submitted that as per the recruitment regulations the post of security guard/gunmen is a selection post. As per the R.R. for the post of security guard/gunman once should essentially be Middle School pass from recognized board and should be Lance Naik or Nail of Army or other equivalent rank of defence force and further for the direct recruitment the incumbent should be ex-servicemen who should be sponsored by DGR/S, Board/Ex-Servicemen, Employment Exchange including 15% personal from Para-military force whereas, for the post of Chowkidar in MCD no academic qualification is required. As per the Recruitment Rules for the post of Chowkidar applicant should have only the capacity to read and write, and further the candidate applying for the post of Chowkidar is also not required to be an ex-servicemen as is required in the case of Security Guard/Gunman. Hence it is W.P.(C) 170/2011 Page 17 of 28 apparent that there is a huge difference in the classification to the post of Chowkidar and security guard/gunman; as such the claim of the applicant for equal pay at par with security guard/gunman is illogic and constitutional. Copy of the R.R. for the post of Security Guard is annexed herewith as Annexure-A. It is further submitted that the qualifications for selection to the post of gunman/security guards as such the present claim is not maintainable and is liable to be dismissed.

5. That even otherwise the claim of the claimant is not maintainable in view of the fact that the nature, duties and responsibilities of both the posts has huge difference. The security guard/gunman are posted on sensitive places like Municipal Treasury, Division etc. where large amount of cash is handled whereas the Chowkidar of Garden Department are posted in different parks maintained by M.C.D. simply for watch and ward of open parks. Further is submitted that the claimant was initially engaged by DDA and were regularized and granted the pay scale by DDA itself and later on were transferred to M.C.D. and were given the salary as per the pay scale granted by the D.D.A. In view of the above submission,

it is apparent that the claimant has no existing right to pay scale of Rs. 2610-4000 at par with security guards/gunman and the claim of parity in the present application is baseless. Thus, the present application is bad in law and is liable to be dismissed. In view of the above the present claim is liable to be dismissed.

6. That the applicant has basically relied its claim on the judgment passed in the writ petition bearing No.1610- 1618/2005, wherein the Honble High Court had held that the security guards/gunman, who are working in other departments are entitled to the pay scale of the security guards/gunman working in the Health Department of M.C.D. It is submitted that in the aforesaid particular case, the petitioners were recruited as security guard/gunman through employment exchange and were having the experience as an Ex-Servicemen, as such, they claimed parity with the gunman/security guards working in the Health Department. Whereas, the applicant has been initially engaged on daily wages as Chowkidar and was regularized as Chowkidar and was never recruited as security guards/gunman. It is submitted that in that very case, the petitioners were having the same qualification as was possessed by the security guards/gunman W.P.(C) 170/2011 Page 18 of 28 working in the Health Department. It is submitted that the applicant was not one of the petitioner in the said case as such, the present claim on the basis of the said judgment is baseless. It is further submitted that in the present case, the applicant is neither a security guard nor a gunman nor has been recruited against the constitutionally sanctioned post of a gunman/security guard as such, the claim of the applicant is absolutely baseless and the parity claimed is without any logic, hence, the present claim is baseless and is liable to be dismissed. It is further submitted that no where in the said judgment had the Honble Court held that the Chowkidar working in the Horticulture Department are performing the same nature of work as is being performed by the security guards/gunman working in the M.C.D. That even otherwise, the applicant was not a party in the aforesaid writ petition, hence the present application filed on the basis of the judgment of the same is also not maintainable. Even otherwise, in the said judgment dated 20/02/2006, Honble High Court observed that the Supreme Court has also ruled that if there are differences based on qualification, rules or conditions of experience based on qualification, rules or conditions of experience etc. the doctrine of equal pay cannot be applied by the courts. The nature of work

may be more or less the same but scale of pay may very based on academic qualification or experience which justified classification. The principle of equal pay for equal work cannot be applied in a mechanical of casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicates the classification made to be unreasonable (Ref. Mewa Ram Kanojia Versus All India Institute of Medical Sciences & Ors., 1989 2 SCC235 V. Markendeya and other V. State of Andhra Pradesh & Ors. (1989) 3 SC191. In view of the said observation of the Honble court, the present claim is liable to be dismissed.

7. That the qualifications for selection to the post of gunman/security guards, duties and responsibilities are absolutely different from those of Chowkidar. It is submitted that as per the recruitment regulations the post of security guard/gunman are selection post. As per the R.R. for the post of security guard/gunman one should essentially be Middle School pass from recognized board and should be Lance Naik or Nail of Army or other equivalent rank of defence force and W.P.(C) 170/2011 Page 19 of 28 further for the direct recruitment the incumbent should be ex- servicemen who should be sponsored by DGR/S, Board/Ex- Servicemen, Employment Exchange including 15% personal from Para-military force. Whereas, for the post of Chowkidar in MCD no academic qualification is required. As per the Recruitment Rules the applicant should have the capacity to read and write, and further the candidate applying for the post of Chowkidar is also not required to be an ex-servicemen as is required in the case of Security Guard/Gunman. Hence it is apparent that there is a huge difference in the classification to the post of Chowkidar and security guard/gunman; as such the claim of the applicant for equal pay at par with security guard/gunman is illogic and constitutional. Copy of the R.R. for the post of Security Guard is annexed herewith as Annexure-A.

8. That the present claim of the claimants is not maintainable in view of the judgment of the Honble Apex Court in case titled State of Haryana Versus Charanjeet 2006 LLI43wherein in the Honble Supreme Court clearly observed equal pay for equal work has no mechanical application is every case. Honble Supreme Court further observed that the very fact that the person has not gone

through the process of recruitment may itself, in certain cases make a difference. If the educational qualification is different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of met with due regard to seniority a higher pay scale granted to such persons who are valued by competent authority cannot be challenged. A classification based on difference in educational qualification justified a different in pay scale. 7.2 Ms. Biji Rajesh also sought to submit that five of the petitioners were appointed as Security Guards, and four were appointed as Chowkidars. She sought to distinguish the judgment of this Court in Ram Kishen (supra) on the ground that the petitioners, in that case, were working in the Health Department, whereas the present W.P.(C) 170/2011 Page 20 of 28 respondents are working in the Horticulture Department. She also sought to place reliance on the judgment of the following decisions: (i) State of U.P. v. Arvind Kumar Srivastava, (2015) 1 SCC347(ii) State of Haryana v. Charanjit Singh, 2006 SCC (L & S) 1804 (iii) Mewa Ram Kanojia v. A.I.I.M.S., (1989) 2 SCC2358. Analysis 8.1 Between the judgments of the learned Single Judge, and of the Division Bench in Ram Kishen (supra), it may justifiably be said that all the dynamics of the equal pay for equal work concept stand exhaustively thrashed out, in circumstances which clearly parallel those in the present case. The workmen-petitioners, in Ram Kishen (supra), too, were designated as Chowkidars/Gunmen, and were appointed consequent to the requisitioning, by the MCD, of names, from the Employment Exchange, for the post of Security Guards/Gunmen. They were deployed in the health wing of the MCD. There was, admittedly, interchangeability of postings. The security personnel and the Chowkidars were doing the same work. As in the present case, the contention, of the MCD, before this Court, was that the two categories of employees were posted at different places, i.e. in different departments. This Court based its decision, to direct parity of pay, on the fact that (i) both categories of employees were under the same employer, (ii) they performed similar duties, (iii) they were W.P.(C) 170/2011 Page 21 of 28 recruited through a constitutionally sanctioned process and (iv) their duties were interchangeable. It was noted that no attempt was made to demonstrate how the duties performed by the two categories of employees were different, or to establish

that security personnel had superior training, or achievements, as compared to Chowkidars. This Court noted that the essential function, of both kinds of employees, was to protect and secure the assets of the MCD. The legal position was tellingly summed up, in para 20 of Roop Chand Adlakha v. Delhi Development Authority, AIR 1989 SC307 which as reproduced and relied upon by the learned Single Judge in Ram Kishen (supra). The said para merits reproduction, once again, thus: 20. To overdo classification is to undo equality. The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves the rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification. Following this, the learned Single Judge held in para 11 of Ram Kishen (supra), as under: 11. The attempts of MCD to justify the differential treatment, and the classification, exemplify precisely the over-classification which renders the guarantee of equality into a chimera, a mere rope of sand. Besides the classification itself, there is no rationale offered. I am of the view therefore, that the petitioners are entitled to the doctrine of equal pay for equal work. W.P.(C) 170/2011 Page 22 of 28 8.2 To seek to distinguish the workmen, in Ram Kishen (supra), from the present respondents, would amount to distinguishing between Tweedledum and Tweedledee. Allowing differential treatment to be extended, to the present respondents, vis--vis the petitioners in Ram Kishen (supra), would clearly be antithetical to the very ethos of Articles 14 and 16, which constitute the life-blood of our Constitution. 8.3 Once the very same posts, which constitute subject matter of dispute in the present case, have already been examined by this Court, in the above decisions, involving the same dispute as assails the present proceedings, it becomes entirely unnecessary to cogitate, to any appreciable extent, on the pronouncements on which Ms. Biji Rajesh has sought to place reliance, which lay down the parameters of the principle of equal pay for equal work in general, and to which, quite obviously, there can be no exception. These principles have, however, in fact been applied, by this Court, in Ram Kishen (supra), to Chowkidars and Security Guards/Gunmen

in the MCD, and a reasoned decision, to direct parity of pay between these categories of workmen, has been taken, and implemented by the MCD. 8.4 The distinction, which was sought to be drawn, by learned Counsel for the petitioner, between the workmen who were subject matter of Ram Kishen (supra), and the present respondents, on the ground that the former happened to be ex-servicemen, has, in my view, no legs to stand on. It is trite and well-settled, in law, that, once persons from different streams of different modes of recruitment, are recruited to a post, their birthmarks stand effaced, and they are entitled W.P.(C) 170/2011 Page 23 of 28 to equal treatment before the law, for all purposes, be it pay or further career advancement. In the context of persons recruited to a post by direct recruitment and promotion, dealing with the question of whether disparity in pay, based on the mode of recruitment, was permissible, the Supreme Court held thus, in Kamlakar v. U.O.I., (1999) 4 SCC756 We have considered the limited issue. We are of the view that all these appellants should get the same relief as the appellants in the civil appeal which arose out of Special Leave Petition No.16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given is concerned. The birthmarks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2- 7-1990, - then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondents' contention. (Emphasis supplied) 8.5 In Nehru Yuva Kendra Sangathan v. Rajesh Mohan Shukla, (2007) 6 SCC9 the Supreme Court, analogously, held thus: is their source of recruitment. Once We find that the nature of duties being discharged by the Youth Coordinators who have come on deputation and have been absorbed as such and those who were directly recruited on fixed terms are discharging the same duties. The only difference the deputationists are discharging the same duties and are being paid salary and other allowances then there is no reason to deny the same benefits (sic to those) who are discharging the same duties and functions. Those deputationists now absorbed obtained the order from this Court

but the direct recruits did not approach this Court, they were treated as a class apart W.P.(C) 170/2011 Page 24 of 28 because of their source of recruitment. Once these persons are already working for more than two decades discharging the same functions and duties then we see no reason why the same benefit should not be given to the respondents. Looking to the nature and duties of these respondents we are of opinion that there is no reason to treat them differently. (Emphasis supplied) 8.6 Many of the cobwebs, in which the equal pay for equal work doctrine was enmeshed, were cleared by the judgment of Khehar, J.

(as the Honble Chief Justice then was) in State of Punjab v. Jagjit Singh, (2017) 1 SCC148which is, by now, widely regarded as an authority on the principle. Paras 42.1 to 42.17 of the judgment of set out the deductions, arrived at, by the Supreme Court, one of which is the following (in para 42.2 of the report): The mere fact that the subject post occupied by the claimant is in a different department vis--vis the reference post does not have any bearing on the determination of a claim under the principle of equal pay for equal work. Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government. 8.7 The principle that persons discharging identical duties in the same organization cannot be discriminated, in the matter of pay, merely because they happen to be posted in different departments thereof may, therefore be treated as no longer res integra. This objection, of the petitioner, to the extension, to the respondents, of the benefit of Ram Kishen (supra) cannot, therefore, sustain, and is accordingly rejected. W.P.(C) 170/2011 Page 25 of 28 8.8 A brief reference to the decisions cited by Ms. Biji Rajesh may be appropriate, at this stage. 8.9 Reliance, on Arvind Kumar Srivastava (supra), was placed, by Ms. Biji Rajesh, to canvass a proposition that the petitioners would not, automatically, become entitled to the benefit of the judgments of this Court in Ram Kishen (supra). She has emphasised the fact that, in Arvind Kumar Srivastava (supra), the Supreme Court carved out an exception to the normal principle that, if one set of employees had been given relief by court, all other identically situated persons were entitled to the same relief. The answer to this submission is to be found in the said judgment itself. While carving out an exception, to the principle that identically situated persons would be entitled to the benefit of the judgment of the court, in the case of causes suffering from laches,

delay and acquiescence, the Supreme Court was cautious to clarify that the said exception would not apply where the judgment pronounced by the court was a judgment in rem, with the intention to benefit all similarly situated persons. In such cases, the Supreme Court held that there was an obligation on the authorities concerned, to themselves extend the benefit of the judgment to similarly situated persons. Delays, laches and acquiescence it was observed, would be a bar to such relief only where the judgment was a judgment in personam, intended only to apply to the persons who had approached the court. 8.10 There is nothing, in the judgment either of the learned Single Judge or of the Division Bench in Ram Kishen (supra) to indicate that W.P.(C) 170/2011 Page 26 of 28 this Court, while pronouncing the said decisions, intended them to apply in personam and not in rem. As such, Arvind Kumar Srivastava (supra) cannot be a ground to deny, to the present respondents, the benefit of the decisions in Ram Kishen (supra).

8. 11 The next decision, on which Ms. Biji Rajesh relied, is State of Haryana v. Charanjit Singh (supra). This decision, as well as the judgment in Mewa Ram Kanojia (supra), on which, too Ms. Biji Rajesh relied, only set out the well known indicia governing the application of the principle of equal pay for equal work. Mewa Ram Kanojia (supra) stands noted by the Supreme Court in Jagjit Singh (supra), which nevertheless, holds that persons doing the same work could not be paid disparate wages, merely because of the situs of their posting, i.e. in different departments of the same organisation. The present dispute, in fact, would stand covered by the said clarification, as contained in Jagjit Singh (supra). Inasmuch as the only ground, on which disparate wages, between the respondents and other persons posted as Security Guards/Chowkidars, being sought to be justified, is the fact that such other persons were posted in the Health Department, the issue would stand squarely covered by Jagjit Singh, as well as the judgments of this Court in Ram Kishen (supra), to which exhaustive reference already stands made hereinabove. 8.12 The legitimacy of the cause of the respondents is also apparent if one were to view the picture from a wider perspective. Denying, to the respondents, the relief which stands granted to them by the learned Tribunal, would result in different wages being paid to persons posted W.P.(C) 170/2011 Page 27 of 28 as Chowkidars/Security Guards, depending on whether the posting is in the Health Department or elsewhere. Nothing, justifying such difference, has

been placed, by the petitioner-MCD, either before the learned Tribunal or before this Court. The evidence of MW-1, as led before the learned Tribunal, was also aimed at distinguishing between Security Guards/Gunmen and Chowkidars, and not between Chowkidars/Security Guards posted in the Health Department and posted elsewhere. This department-to-department disparity, which existed in the MCD, qua Chowkidars/Security Guards, and which has been set right by the impugned Award, obviously fell afoul of Articles 14 and 16 of the Constitution of India, and could not have been allowed to continue.

9. 9.1 Conclusion I am therefore, convinced that the learned Tribunal was perfectly justified in allowing the claims of the respondent and equalising their pay and emoluments with those of Chowkidars/Security Guards posted in the Health Department. No case, for interference with the said Award, can be said to have been made out by the petitioner. 9.2 The writ petition is accordingly dismissed. 9.3 There shall be no order as to costs. OCTOBER09 2018/kr C.HARI SHANKAR, J W.P.(C) 170/2011 Page 28 of 28

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