

m.c.d. Vs.its Workmen Represented by Hospital Employees Union

m.c.d. Vs.its Workmen Represented by Hospital Employees Union

SooperKanoon Citation : sooperkanoon.com/1224389

Court : Delhi

Decided On : Jul-31-2019

Appellant : m.c.d.

Respondent : Its Workmen Represented by Hospital Employees Union

Advocate for Pet/Ap. : Mr. Rajiv Agarwal, Ms. Sugandh Kochhar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Tushar Sannu, Mr. Mohit Dagar, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Anju Gupta, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Rizwan, Mr. Apoorv Singhal, Mr. Anju Gupta, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Rizwan, Mr. Apoorv Singhal, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Ms. Biji Rajesh, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Mr. Rizwan, Mr. Apoorv Singhal, Ms. Biji Rajesh, Mr. GaurangKanth, Mr. Rajiv Agarwal, Ms. Sugandh Kochar, Ms. Anju Gupta, Mr.

[illegible]

Judgement :

\$~3 - 34 * % IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

31. t July, 2019 + W.P.(C) 8812/2007 3 M.C.D. Through: versus

... Petitioner

..... Respondent ITS WORKMEN REPRESENTED BY HOSPITAL EMPLOYEES UNION Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochhar, Advocates. + W.P.(C) 8096/2015 4 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus KALLU RAM AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8097/2015 & CM No.16764/2015 5 SOUTH DELHI MUNICIPAL CORPORATION
Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus W.P.(C) 8812/2007 & connected matters Page 1 of 15 RANBIR SINGH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 8099/2015 & CM No.16768/2015 6 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus SILAK RAM AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8100/2015 & CM No.16771/2015 7 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus BHARTI DEVI AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 8105/2015 & CM No.16777/2015 8 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel versus for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

W.P.(C) 8812/2007 & connected matters Page 2 of 15 RAM KISHAN AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8112/2015 & CM No.16792/2015 9 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus CHANDAN SINGH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 8113/2015 & CM No.16794/2015 10 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus BAL KISHAN AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8114/2015 & CM No.16796/2015 11 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus W.P.(C) 8812/2007 & connected matters Page 3 of 15 H.S. TYAGI AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8366/2015 & CM No.17752/2015 12 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus LEKH RAJ AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 8367/2015 & CM No.17754/2015 13 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus RISHI KUMAR UPADHYAYA AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 8368/2015 & CM No.17756/2015 14 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus W.P.(C) 8812/2007 & connected matters Page 4 of 15 RAMESH AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 1097/2016 & CM No.4767/2016 15 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus DHEL CHAND AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 197/2016 & CM No.811/2016 16 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Tushar Sannu, Standing counsel for SDMC with Mr. Mohit Dagar, Advocate.

... Petitioner

versus MANJEET SINGH GAHLOT AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 2097/2016 & CM No.9019/2016 17 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Anju Gupta and Roshan Lal Goel,

... Petitioner

... RESPONDENTS

RAGHUVVEER AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. Mr. Rizwan and Mr. Apoorv Singhal, Advocates for GNCTD. + W.P.(C) 2099/2016 & CM No.9021/2016 18 SOUTH DELHI MUNICIPAL CORPORATION Through: Mr. Anju Gupta and Roshan Lal Goel,

... Petitioner

Advocates. versus

... RESPONDENTS

KANTI PRASAD AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. Mr. Rizwan and Mr. Apoorv Singhal, Advocates for GNCTD. + W.P.(C) 4684/2016 & CM No.19545/2016 SOUTH DELHI MUNICIPAL CORPORATION Through:

... Petitioner

versus DY LABOUR COMMISSIONER DISTRICT SOUTH AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. 19 + W.P.(C) 10313/2017 & CM No.42053/2017 20 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr.Gaurang Kanth, Advocates. W.P.(C) 8812/2007 & connected matters Page 6 of 15 versus

... RESPONDENTS

OM PRAKASH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. Mr. Rizwan and Mr. Apoorv Singhal, Advocates for GNCTD. + W.P.(C) 10349/2017 & CM No.42199/2017 21 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang Kanth, Advocates. versus SATISH AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 3172/2017 & CM No.13816/2017 22 SOUTH DELHI MUNICIPAL CORPORATION

Through: Ms. Anju Gupta and Mr. Roshan Lal Goel, Advocates.

... Petitioner

versus GOPAL SINGH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 3599/2017 & CM No.15826/2017 23 EAST DELHI MUNICIPAL CORPORATION versus Through: Mr. Kumar Rajesh Singh, Standing Counsel with Ms. Punam Singh, Advocate.

... Petitioner

W.P.(C) 8812/2007 & connected matters Page 7 of 15 KISHAN LAL AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 3601/2017 & CM No.15834/2017 EAST DELHI MUNICIPAL CORPORATION

Through: Mr. Kumar Rajesh Singh, Standing versus Counsel with Ms. Punam Singh, Advocate.

... Petitioner

JAHEER AHMED AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

24 + W.P.(C) 5283/2017 25 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate. GOVIND SINGH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 9067/2017 26 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate. RAGHUBIR SINGH AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

W.P.(C) 8812/2007 & connected matters Page 8 of 15 + W.P.(C) 316/2018 27 SOUTH DELHI MUNICIPAL CORPORATION Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate.

... Petitioner

KISHAN AND ORS. + W.P.(C) 427/2018

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. 28 SOUTH DELHI MUNICIPAL CORPORATION Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate.

... Petitioner

DUDHNATH AND ORS. + W.P.(C) 428/2018

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. 29 SOUTH DELHI MUNICIPAL CORPORATION Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate.

... Petitioner

RAM AVATAR AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 429/2018 30 SOUTH DELHI MUNICIPAL CORPORATION Through: Ms. Biji Rajesh and Mr. Gaurang

... Petitioner

W.P.(C) 8812/2007 & connected matters Page 9 of 15 versus Kanth, Advocate. CHETMAN GIRI AND ORS.

... RESPONDENTS

Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates. + W.P.(C) 6143/2018 & CM APPL. 23794/2018 31 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate. PURAN MAL AND ORS. + W.P.(C) 6946/2018 & CM APPL. 26344/2018 Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

32 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate. JITENDER KUMAR AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

+ W.P.(C) 6947/2018 & CM APPL. 26346/2018 33 NORTH DELHI MUNICIPAL CORPORATION

... Petitioner

Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate. W.P.(C) 8812/2007 & connected matters Page 10 of 15 SURESH CHAND AND ORS. Kochar, Advocates. + W.P.(C) 510/2019 & CM APPLs. 2405-2406/2019 Through: Mr. Rajiv Agarwal and Ms. Sugandh

... RESPONDENTS

34 1. SOUTH DELHI MUNICIPAL CORPORATION Through: Ms. Biji Rajesh and Mr. Gaurang versus Kanth, Advocate.

... Petitioner

DAVENDER KUMAR AND ORS. Through: Mr. Rajiv Agarwal and Ms. Sugandh Kochar, Advocates.

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

(ORAL) The petitioner has challenged the awards dated 31st July, 2006 whereby the Industrial Tribunal directed the washing allowance to be disbursed to the workmen at the rate of Rs.60/- per month with effect from 20th July 1993. In W.P.(C) 4684/2016, W.P.(C) 3599/2017 and W.P.(C) 3601/2017, the petitioner has challenged the recovery certificates issued for implementation of the awards.

2. The C and D category employees of the petitioner raised an Industrial dispute claiming enhancement of their washing allowance from Rs.15/- per month to Rs.60/- per month on the ground that the C and D category employees of hospitals/medical institutions were being paid washing allowance of Rs.60/- per month w.e.f. 20th July, 1993.

3. The petitioner defended the claim on the ground that the working conditions of C and D category employees in the hospitals cannot be equated W.P.(C) 8812/2007 & connected matters Page 11 of 15 with the employees in the other departments. The petitioner follows Central Government orders with respect to the allowances payable to its employees. On 22nd June, 2000, the petitioner enhanced the washing allowance on C & D category employees working in the hospitals from Rs.15/- per month to Rs.60/- per month w.e.f. 20th July, 1993. With respect to the employees other than the hospital employees, washing allowance of Rs.15/- per month was increased to Rs.30/- per month w.e.f. 01st August, 1997 vide circular dated 14th September, 2001.

4. The Industrial Tribunal held that there was no justification for discrimination between C and D category employees working in hospitals and other C and D category employees and the Industrial Tribunal directed the petitioner to pay washing allowance to all C and D category employees at the rate of Rs.60/- per month with effect from 20th July, 1993.

5. Learned counsel for the petitioner urged at the time of hearing that that the work of the employees working in hospitals cannot be equated with other employees as the nature of work and duties of the hospital employees is different from other employees. It is further submitted that the principle of equal pay for equal work would not apply in the present case as the nature of work and duties of the two categories of employees are different.

6. Learned counsel for the respondents urged at the time of the hearing that C and D category employees whether working in hospitals/medical institutions or any other department, are doing the same work and are discharging the same duties. There is no difference in their qualification and/or in the nature of work. It is further submitted that disparity in payment of washing allowance is in complete violation of the principle of equal pay for equal work. It is further submitted that the pay scale prescribed by the W.P.(C) 8812/2007 & connected matters Page 12 of 15 Central/State Government is not binding on MCD. It is further submitted that the MCD admitted before the Industrial Tribunal that the washing allowance of all C and D employees has been increased to Rs.60/- per month with effect from 20th July, 1993.

7. Learned counsel for the petitioner urged at the time of the hearing that the petitioner never admitted before the Industrial Tribunal that the washing allowance of all C and D category employees has been enhanced to Rs.60/- per month with effect from 20th July, 1993 and the Industrial Tribunal erred in recording the same. It is further submitted that the petitioner has placed on record the copy of O.M. No.257/AO(H)/EC(F)/2000 dated 22nd June, 2000; O.M. No.14/9/95-JCA dated 12th December, 2000; Circular No.F4(34)/CA/F&G/2001 1186 dated 14th September, 2001; Standing Committee resolution No.393 dated 22nd August, 2001 and Decision No.5349/GW/Corp dated 17th June 1996.

8. Vide order dated 02nd April, 2019, this Court directed the Central Government to place on record the relevant circular/OMs with respect to the washing allowance paid to C and D category employees working in hospitals/health department and the employees working in other departments whereupon the Central Government filed the relevant circulars. The Central Government has been consistently paying higher washing allowance to the hospital staff and the same had not been a subject matter of any challenge.

9. This Court is of the view that the nature of work of the C and D employees posted in the hospitals is different from the other employees. The work of the hospital employees is extremely arduous in nature. The nature of work of hospital staff are exposed to patients affected with communicable diseases, handling of infected materials, instruments and equipments which W.P.(C) 8812/2007 & connected matters Page 13 of 15 could spread infections from human tissues or organs, through blood and other body fluids, pathological fluids and discharges, biochemical and microbiological samples. The nature of work also involves routine handling, exposure and contact with other hazardous samples like toxic, corrosive, inflammable, reactive or injurious substances, chemicals and radiations. Routine contact with patients due to the nature of work of the above said categories may lead to accidental or inadvertent transmission of communicable disease to these employees. Such constant and continuous exposure while discharging their official duties renders them vulnerable and susceptible for acquiring debilitating and life threatening communicable diseases. Further these employees are at a high risk of contacting hospital related infections from the patients or through other biohazards.

10. This Court is satisfied that payment of higher washing allowance to the hospital staff is founded on intelligible differentia which has a rational nexus to their nature of work and there is no infirmity in the payment of higher washing allowance to the C and D category employees in the hospitals. With respect to the admission of the petitioner noted by the Industrial Tribunal, it is noted that the petitioner nowhere admitted the respondents claim either in their written statement or in their evidence. The petitioner placed on record all the relevant circulars in support of their defence. The admission of the petitioner appears to have been

wrongly recorded by the Industrial Tribunal. The admission of the petitioner recorded by the Industrial Tribunal is therefore, set aside.

11. The writ petitions are allowed and the impugned awards as well as the recovery certificates are hereby set aside. Pending applications are disposed of. W.P.(C) 8812/2007 & connected matters Page 14 of 15 12. Copy of this judgment be given dasti to learned counsel for the parties under signature of Court Master. JULY31 2019 ak J.R. MIDHA, J.

W.P.(C) 8812/2007 & connected matters Page 15 of 15

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