

**Sita Ram and Others Vs. Mcd**

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**SooperKanoon Citation :** [sooperkanoon.com/948797](http://sooperkanoon.com/948797)

**Court :** Delhi

**Decided On :** Feb-21-2012

**Judge :** The Honourable Acting Chief Justice Mr. a.K. Sikri & Rajiv Sahai  
Endlaw

**Appeal No. :** LPA 112 of 2012

**Appellant :** Sita Ram and Others

**Respondent :** Mcd

**Judgement :**

## **ORDER**

**21.02.2012**

**CM No.2748/2012 (delay)**

1. For the reasons stated in this application, the delay in filing the appeal is condoned. CM stands disposed of.

**LPA No.112/2012**

2. Admit.

3. With the consent of learned counsel for the parties we have heard the matter finally at this stage. The Appellants are working as ECG Technicians in the

Municipal Corporation of Delhi (MCD). Pay scale attached to this post, before implementation of 5th Pay Commission, was Rs.4000-6000. Same pay scale was given to ECG Technician working in Delhi Administration (now Govt. of NCT of Delhi). However, when the recommendations of 5th Pay Commission were accepted and implemented in the MCD, the revised pay scale given to the Appellants was Rs.4000-6000 whereas for the employees working in the Govt. of NCT of Delhi the pay scale accorded was Rs.4500-7000 w.e.f. 1.1.1996. The Appellants demanded the pay scale of Rs.4500-7000 at par with their counterparts working in Govt. of NCT of Delhi and raised industrial dispute in this regard. The defence of the MCD was that even when the recommendations of 5th Pay Commission were accepted and adopted in MCD, insofar as ECG Technicians are concerned, the MCD had not accepted the said pay scale i.e. Rs.4500-7000 as per Part-B of the 1st schedule of Govt. of India notification and, therefore, claim of the Appellants for pay scale of Rs.4500-7000 was not valid. This defence/explanation of the MCD was accepted by the learned Industrial Tribunal and on that basis award dated 23.1.2006 was passed denying the relief to the Appellants. Appellants challenged this award by filing the W.P(C) No.2940/2010. This writ petition has been dismissed by the learned Single Judge on the ground of delay and laches vide impugned order dated 21.11.2011.

4. The submission of learned counsel for the Appellants is that the Appellants have strong case on merits. He further submits that even the witness of the MCD Mr. Raj Kumar Sharma who appeared as MW 2 had admitted that not only the previous revised pay scale were same, even the nature of duties, qualifications and recruitment rules are the same for the post of ECG Technicians in Delhi Administration as well as in MCD. It was also submitted that Part B of the 5th Pay Commission in respect of the pay scales of its other employees like X-Ray Assistants, X-Ray Technicians, Laboratory Assistants, Laboratory Technicians, OT Assistants, OT Technicians, Statistical Assistants and others has been accepted by the MCD and it is only the Appellants who are deprived of the benefit. On this basis, the argument is that even if the award is challenged after some delay, the Appellants are suffering continuously and, therefore, the writ petition should not have been dismissed on the ground of

delay and laches.

5. Normally, when award was rendered on 23.1.2006, it should have been challenged with promptness and without undue delay. However, we find that in the instant case if the Appellants are able to justify the grant of pay scale of Rs.4500-7000, it may affect them for all times to come and in these circumstances instead of dismissing the writ petition on the ground of delay and laches, appropriate course of action would be to mould the relief (if ultimately granted) by denying the arrears of the intervening period to the Appellants. We find that the Appellants have an arguable case which needs consideration on merits. We accordingly allow this appeal and set aside the order dated 21.11.2011 and remand the case back to the learned Single Judge for the decision of the writ petition on merits. As pointed out above, in case the Appellants succeed, it would always be open to the learned Single Judge to mould the relief and deny the arrears of pay for specific period. We also make it clear that we have not expressed our opinion on the merits of the claim made by the Appellants. It would be for the learned Single Judge to determine as to for which period the arrears are to be denied.

6. In view of the aforesaid, the appeal is disposed of accordingly.