

\$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 7th October, 2021

+ **W.P.(C) 11529/2021 & CM APPL. 35538-39/2021**
SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Sanjeev Sagar and Ms. Nazia
Parveen, Advocates with Mr. Anil
Kumar, Asst. Engg./SDMC.
(M:9278693021)

versus

SH HORAM Respondent
Through: Mr. Ajit Kumar Kalia and Mr.
Abhinav, Kalia, Advocates.
(M:8368244110 & 9899734192)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner/South Delhi Municipal Corporation (*hereinafter* "SDMC") challenging the impugned orders dated 17th September, 2021 and 30th September, 2021 passed by the Presiding Officer Industrial Tribunal, Rouse Avenue Court, New Delhi (*hereinafter* "Labour Court") in **ID No.168/16** titled **Shri Horam v. MCD**, by which the Commissioner, SDMC has been directed to appear in person. The said orders read as under:

Order dated 17.09.2021

"Fresh memo of parties filed. Let the same be taken on record in terms of order dated 03.03.2020.

Today the case is listed for arguments. During arguments, Ld. AR for workman refers to Office Order No. AO/Engg.(HQ)/NDMC/2018/752 dated

22.11.2018 of Administrative Officer, Engineering Deptt. (HQ), North Delhi Municipal Corporation, Civic Centre, JLN Marg, New Delhi-110002. This order has been passed after the judgment of Hon'ble High Court of Delhi in Abid Ali Vs. MCD in SLP (Civil) No.30994-31015/2011 in LPA No.126/2020.

Let Commissioner, concerned MCD shall appear in person to explain the reasons for not complying with judgment passed by Hon'ble High Court of Delhi for 24.09.2021.

Copy of the order be sent by Ahlmad of the Court to the office of the management.”

Order dated 30.09.2021

Ld. AR for management has moved an application for exemption from personal appearance of Commissioner, SDMC through mail to the Reader of this Tribunal.

Application is perused.

No specific reason has been mentioned regarding non appearance of commissioner before this Tribunal. This Tribunal is not satisfied regarding the reasons mentioned in the application. Only lame excuses have been taken on behalf of management.

Ld. AR for workman has strongly objected for non appearance of Commissioner submitting that case is more than 10 years old and management is unnecessary delaying the matter.

Ld. AR for management undertakes that he will ensure the compliance of previous order.

As requested, now, to come up for compliance of previous order/further arguments on **12.10.2021 at 12 noon.**”

3. The impugned orders arise out of a statement of claim filed by Shri Horam/Respondent/Workman (*hereinafter* “*Workman*”), who claimed that he was initially appointed as a *beldar* in 1975, then was promoted to the post of a *fitter* on 15th November, 1980 and was regularized on 14th September, 1981 in the pay scale of Rs.196 - 232/-. The case of the Workman is that he was wrongly regularized in this pay scale. The Workman retired on 31st December, 2009. However, as per the counsel for the Workman, this claim was made for the first time in 2006 before the Commissioner, MCD.

4. The Workman then filed his claim before the Labour Court on 4th May, 2012, after terms of reference being framed vide Reference No.F.24(159)ND/663/2011/Lab/2114 dated 14th December, 2011. In response to the claim, the erstwhile MCD, prior to its bifurcation, took the stand that the Workman has retired and, in any case, he was promoted to the post of *assistant fitter* with effect from 1st April, 1981 and he had not raised any protest whatsoever at any point of time. The MCD stated that the Workman raised this complaint for the very first time in 2011, and post retirement, after a lapse of 30 years from his regularization. This matter is now pending before the Labour Court. In the proceedings before the Labour Court, the impugned orders have been passed, directing the personal appearance of the Commissioner, SDMC.

5. A perusal of the various orders of the Labour Court shows that the proceedings that took place are as under:

- (i) **19th February, 2021:** The evidence having been led, final arguments commenced.

- (ii) **1st March, 2021:** Written arguments were filed by both parties, the matter was adjourned for clarification if any/order for 15th March, 2021.
- (iii) **31st March, 2021:** The matter was again adjourned for arguments/clarifications to 30th April, 2021 and the order recorded that there was no appearance for the parties.
- (iv) **22nd July, 2021:** Court notice was issued to parties, on account of their non-appearance.
- (v) **28th July, 2021:** Counsel for SDMC submitted that written arguments had already been filed, however the Workman sought time to file some case laws and one week was granted.
- (vi) **17th September, 2021:** Fresh memo of parties was filed and the impugned order was passed directing the Commissioner, SDMC to appear, as extracted above.
- (vii) **24th September, 2021:** An explanation was sought from the Ahlmad, as to why copy of the order dated 17th September, 2021, had not been sent to the office of SDMC.
- (viii) **30th September, 2021:** The SDMC sought exemption from appearance. The Labour Court also noted that the Workman's authorized representative had raised objections to non-appearance of the Commissioner, SDMC and the matter was then adjourned to 12th October, 2021.

6. On a clarification as to what the fresh memo of parties, which was taken on record vide the impugned order dated 17th September, 2021, was

relating to, Mr. Kalia, Ld. Counsel for the Workman, submits that the Workman had expired on 26th January, 2019. However, he moved the application for impleadment of legal heirs only on 17th September, 2021. On the question as to why there was a delay in filing the said application/amended memo of parties, the Id. Counsel submits that the legal heirs of the Workman did not inform him about the demise of the Workman.

7. Mr. Sagar, Ld. Counsel for SDMC, submits that the Labour Court was to pronounce the orders after having heard the matter and even the written arguments have been filed since March, 2021. Despite this, the matter is being repeatedly adjourned for *clarification, if any/orders* and finally the impugned order has been passed summoning the Commissioner, SDMC to appear. He submits that even the basis on which the Commissioner has been summoned, is completely untenable as the judgment of this Court dated 31 May, 2011 in ***LPA No.126/2010 & connected matters***, titled ***Abid Ali v. MCD*** and the dismissal of the special leave petition in this matter, by the Hon'ble Supreme Court vide order dated 13th August, 2012, in ***SLP (Civil) No.30994-31015/2011***, has no application in the present case. He supports this submission by stating that the said petitions related to workmen who were in the pay scale of Rs.260- Rs.400/- with effect from 1st April, 1980. In the present case, the Workman was regularized for the first time only in 1981 as an *assistant fitter* and is in a lower pay scale. The said judgment has no application. He submits that the Labour Court has incorrectly relied on this judgment and the order of the Hon'ble Supreme Court dismissing the special leave petition, and has summoned the Commissioner for no valid reason. Reliance is also placed upon the recent judgment of the Supreme Court in ***State of Uttar Pradesh & Ors v. Dr. Manoj Kumar Sharma [Civil***

Appeal No. 2320 of 2021, decision dated 9th July, 2021] to argue that the Hon'ble Supreme Court also deprecated the practice of summoning senior public officials unnecessarily.

8. He further submits that orders are to be pronounced by the Labour Court, however, instead of pronouncing the order, the Labour Court has chosen to summon the Commissioner and exemption from appearance of the Commissioner has also been rejected. Hence, the present petition.

9. Mr. Kalia, ld. counsel for the Workman first submits that *fitter* and *assistant fitter* are one and the same post. He further submits that *Abid Ali (supra)* applies in the present case. The North Delhi Municipal Corporation and East Delhi Municipal Corporation, two of the bifurcated corporations from the erstwhile Municipal Corporation of Delhi, have already implemented the decision in *Abid Ali (supra)* in 2018 and 2019. However, the SDMC is not implementing the same. It is for this reason that the Labour Court summoned the Commissioner. He submits that there are several cases pending before the Labour Court, which should simply follow *Abid Ali (supra)* and non-implementation of the said decision has resulted in multiple litigations before the Labour Court.

10. Heard Ld. Counsels for the parties and perused the record.

11. A perusal of the order sheets of the Labour Court shows, clearly, that the matter was partly heard on 19th February, 2021 and thereafter, on 1st March, 2021, the written arguments have been filed and the submissions have also concluded before the Labour Court. This is clear from the order dated 1st March, 2021, which reads as under:

*“ Written arguments on behalf of workman filed.
Copy supplied.*

Written arguments on behalf of management filed. Copy supplied.

Now, to come up for clarification if any/order on 15.03.2021.”

12. Thus, from 1st March, 2021, the submissions having been concluded and arguments having been heard by the Labour Court, the final order is still not being pronounced and the matter is being adjourned repeatedly for “*clarification if any/order*”. This practice being followed by the Labour Courts or the District Courts is not proper as has been held by this Court in ***Dalbir Singh vs Satish Chand [C.R.P. 53/2020 & CM APPLs. 15960-61/2020, decided on 22 July 2020]*** and ***Deepti Khera v. Siddharth Khera [CM (M) 1637/2019, decided on 18th November, 2019]***. Once the arguments have been heard, the orders ought to be pronounced in an expeditious manner as held by the Hon’ble Supreme Court repeatedly in ***Anil Rai v. State of Bihar, (2001) 7 SCC 318*** and ***Balaji Baliram & Anr. v. State of Maharashtra & Ors. [Civil Appeal No.3564/2020, decided on 29th October, 2020]***. Thus, the procedure followed by the Labour Court in this case is inexplicable and contrary to settled and binding law. The fact that this matter is being repeatedly adjourned for ‘*Clarification/order*’ itself shows that the Labour Court does not have any basis for not pronouncing the orders.

13. Moreover, the Workman had also expired in 2019. This fact was not brought before the Labour Court till 2021. This practice of the legal representatives of workmen not informing the Court of the demise of a workman is also completely unacceptable. In this matter, it appears that even the evidence was led after the Workman had passed away and the arguments have been heard without bringing the legal representatives on record. The

Labour Court finally relies upon the judgments in *Abid Ali (supra)* and in the order of the Hon'ble Supreme Court dismissing the SLP in this matter, in order to summon the Commissioner, SDMC.

14. This summoning, in the opinion of this Court, was completely unwarranted and uncalled for. Recently, the Supreme Court, in *Dr Manoj Kumar Sharma (supra)* has held:

“The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.

xxx

Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now.

The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.”

15. Thus, in the facts of this case there was no justification for summoning the Commissioner, SDMC. The Labour Court, if it required any explanation as to why the judgment in *Abid Ali (supra)* was not being implemented, could have at best called for an affidavit in this regard but the summoning of the Commissioner, especially when, it is not clear as to whether the judgment in *Abid Ali (supra)* would even apply to the facts of the present case or not, is unsustainable. The Labour Court ought to be cautious while ordering the personal appearance of senior officials, especially in individual cases where determination is yet to be made by the Labour Court.

16. Accordingly, the impugned orders dated 17th September, 2021 and 30th September, 2021 are set aside to the extent that the Commissioner has been summoned. The amended memo of parties, having been taken on record already by the Labour Court, is not being interfered with. Since the submissions have already concluded, the written arguments have also been filed and the case laws have also been placed on record, *Shri Jitendra Kumar Mishra, Ld. Presiding Officer Industrial Tribunal, Rouse Avenue Court, New Delhi* shall proceed to pass orders in this matter, on merits, after considering the submissions made/ judgments cited, in accordance with law, within 30 days of this order. This Court has not expressed any opinion on the merits of the matter.

17. With these observations, the present petition is disposed of. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 7, 2021/dk/Ms

