

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

W.P.(C) 3953/1999

%

Date of decision: 28th May, 2010

SMT. PREM MEHTA.

.... Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

Versus

**THE PRESIDING OFFICER, LABOUR COURT NO.VI
& ANR.**

.... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner working as a nurse in the hospital of respondent no.2 MCD has preferred this petition with respect to the order dated 30th March 1999 of the Labour Court dismissing the application filed by the petitioner under Section 33C(2) of the ID Act. The petitioner vide the said application under Section 33C(2) was seeking enforcement of the award dated 13th May, 1988 published on 17th June, 1988. Vide the said award, all the Grade 'B' Staff Nurses working in the hospitals of the respondent MCD, who were posted against the post of Grade 'A' Staff

Nurses and had completed three years were held entitled to the pay of Grade 'A' Staff Nurses for the period during which they worked against the post of Grade 'A' Staff Nurses w.e.f. 27th June 1979 (the date of that reference). The application under Section 33C(2) was preferred by the petitioner claiming pay/emoluments of Grade 'A' Staff Nurse for the period from 1st August, 1988 to 31st March, 1992. The Labour Court dismissed the said application finding that there was no documentary proof on record as to since when the petitioner had been posted against the post of Grade 'A' Staff Nurse; the Labour Court holding it to be not proved on record that the petitioner had worked against the post of Grade 'A' Staff Nurse continuously for the period from 1st August, 1988 to 31st March, 1992, dismissed the application holding her not entitled to the amount claimed.

2. Aggrieved therefrom the present petition was preferred. Notice of the petition was issued to the respondent MCD who has filed a counter affidavit. The petition from time to time was ordered to be listed along with W.P.(C) No.2521/1988 filed by the respondent MCD impugning the award dated 13th May, 1988 (supra) in enforcement whereof the application under Section 33C(2) was filed. W.P.(C) No.2521/1988 has been dismissed vide order dated 20th April, 2010 reported as MANU/DE/0835/2010.

3. The counsel for the petitioner has contended that the order dismissing the application of the petitioner under Section 33C(2) is perverse. It is shown from the award dated 13th May, 1988 itself that it is recorded therein that the petitioner had joined the services as Grade 'B' Staff Nurse w.e.f. 4th May 1964 and was posted against the post of Grade 'A' Staff Nurse. It is further contended that since the award directed payment w.e.f. 27th June, 1979, the petitioner had prior to the application under Section 33C(2) which has been dismissed vide order impugned in this petition, also filed an application under Section 33C(2) for the period from 27th June, 1979 to 31st July, 1988 and which was registered as LCA No.228/1988 decided on 1st March 1990. A perusal of the said order shows that the MCD in that proceeding had submitted a statement showing a sum of Rs.33,782.62/- to be due to the petitioner under the award, for that period and which figure was accepted by the petitioner and the petitioner was accordingly held entitled to the said sum of Rs.33,782.62/- for the period upto 31st July, 1988.

4. I have perused the reply filed by the respondent MCD to the application under Section 33C(2) which has been dismissed. There is no plea therein that the petitioner after 31st July, 1988 had been removed from the post of Grade 'A' Staff Nurse and/or relegated to Grade 'B' Staff Nurse and performing duties of a Grade 'B' Staff Nurse. The same is even otherwise highly unlikely.

5. I also find that the petitioner in the application under Section 33C(2) itself which has been dismissed had stated that she had recovered the emoluments of Grade 'A' Staff Nurse from June, 1979 to 31st July, 1988. The petitioner had also led evidence to the said effect. All the said relevant factors have been totally ignored by the Labour Court. The Labour Court put undue emphasis on the statement in the cross-examination of the petitioner to the effect that she could not give the date, month or year from which she had been working as Grade 'A' Staff Nurse. In view of the respondent MCD in the earlier Section 33C(2) proceeding having not disputed that the petitioner, under the award dated 13th May, 1988, was entitled to emoluments of Grade 'A' Staff Nurse and further having computed the said emoluments and paid the same to the petitioner, in fact no trial whatsoever was necessary. The order dated 30th March, 1999 is thus found perverse and contrary to the record.

6. The petition is thus allowed, the order dated 30th March, 1999 dismissing the application of the petitioner under Section 33C(2) for emoluments of Grade 'A' Staff Nurse for the period of 1st August, 1988 to 31st March, 1992 is set aside and the application under Section 33C(2) is allowed and the petitioner is held entitled to the emoluments of Grade 'A' Staff Nurse from 1st August, 1988 to 31st March, 1992. The petitioner had claimed the sum of Rs.61,850/- to be so due to her. The

said amount has not been controverted. Accordingly, the respondent MCD is directed to pay the said amount of Rs.61,850/- to the petitioner together with interest at the rate of 7% per annum from 30th March, 1999 till the date of payment within six weeks of today. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th May, 2010
bs