

MANU/DE/4033/2012

Equivalent Citation: 2012VAD(Delhi)711

IN THE HIGH COURT OF DELHI

CM No. 10257/2011 in W.P. (C) No. 8613/2005

Decided On: 25.05.2012

Appellants: **University Of Delhi**
Vs.
Respondent: **Suresh**

Hon'ble Judges/Coram:

Gita Mittal, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. Rajinder Dhawan, Adv. with Mr. B.S. Rana, Adv. & Ms. Shafali Dhawan, Adv.

For Respondents/Defendant: Mr. Anuj Aggarwal, Adv.

JUDGMENT

Gita Mittal, J.

CM No. 10257/2011

1. Leave is sought to place an affidavit on behalf of the respondent enclosing copies of her degrees and mark sheets etc. It is submitted that the degrees and mark sheets were duly submitted to the Delhi University. Learned Counsel for the petitioner submits that he has no objection to the same being taken on record. It is ordered accordingly.

2. This application has been filed by the workman-respondent seeking review of the order dated 14th February, 2006 passed under Section 17-B of the Industrial Disputes Act, 1947, whereby the petitioner was directed to make payment of wages to the respondent at a rate equivalent to the wages last drawn by her which were admittedly at the rate of Rs. 1,500/- per month with effect from 25th November, 2004, the date when the industrial award was made in her favour. It was also directed that the petitioner would pay arrears on this basis to the respondent-workman within a period of six weeks from that date.

3. The respondent does not dispute that the petitioner has complied with the order dated 14th February, 2006 and wages at this rate has been paid to the workman.

4. The present application has been filed by the respondent-workman pointing out that there was an error apparent on the face of the record in the order dated 14th February, 2006. It has been pointed out that this Court had rejected the grant of the respondent's prayer for payment of wages at a rate equivalent to the rate statutory prescribed by notification under the Minimum Wages Act, on the contention of the respondent, to the effect that she had been employed as a daily wages attendant and that there was no equivalent post for which minimum wages had been envisaged by the authority.

5. My attention is today drawn by Mr. Anuj Aggarwal, Learned Counsel for the

respondent to the evidence which was led by the petitioner-University before the Industrial Disputes Tribunal. In this regard, I find that the petitioner-University had examined one Mr. B.M. Taneja, a senior assistant as MW 1. In his cross-examination the witness has stated as follows:-

It is correct that the workman was appointed against the vacant post which was carrying the regular pay scales; whereas the concerned workman was paid consolidated of Rs. 1500/- per month or minimum wages under the Minimum Wages Act.

6. From this deposition, it would appear that denial of the minimum wages to the workman by the order dated 14th February, 2006 of this Court on the ground that there was no equivalent post, was prima facie erroneous and actually contrary to the evidence which was led by the petitioner before the learned trial court.

7. There is yet another important fact which has a bearing on the present petition. My attention has been drawn by Learned Counsel for the respondent to the fact that the University of Delhi periodically issues notifications prescribing the rates at which daily wage staff was required to be paid.

8. Along with the present petition, the respondent has placed before this Court copies of notifications dated 9th January, 2008 and 9th June, 2010 issued by the Delhi University. The petitioner has thereby categorized the daily wage staff by virtue of the duties which they are required to perform as well as their educational qualification into different categories and prescribed different rates of wages as per the qualifications and work being performed.

9. In view of the above submissions, Learned Counsel for the petitioner-University has taken instructions and has today handed in court over copies of nine notifications being notifications dated 22nd December, 2004; 30th December, 2004; 21st October, 2005; 7th December, 2006; 9th January, 2008; 5th January, 2009; 26th May, 2009; 9th June, 2010 & 26th April, 2011, in court today prescribing the categories and the rates at which daily wage staff in the University w.e.f. 1st February, 2004 till 26th April, 2011.

10. Be that as it may, the object of the notifications dated 22nd December, 2004; 30th December, 2004; 21st October, 2005; 7th December, 2006; 9th January, 2008; 5th January, 2009; 26th May, 2009; 9th June, 2010 & 26th April, 2011 fortifies the submissions made on behalf of the respondent who is the review petitioner before me. Such notifications would be in the power and possession of the University of Delhi.

11. Mr. Aggarwal, Learned Counsel for the respondent submits that such notifications were admittedly issued and revised periodically by the respondent. These notifications were not brought to the notice of this Court on the 14th February, 2006 and certainly would have guided adjudication on the rate at which the workman would be required to be paid.

12. Minimum wages payable to employees including daily wagers in any organization may be prescribed by virtue of the application of the Minimum Wages Act. An employer may also prescribe minimum wages which it would pay to the daily wage personnel de hors any statutory prescription but would not be below such provision. In either of these eventualities, it is such minimum wages which would require to be paid by the management to the daily wager. It, therefore, has to be held that there is an error apparent on the face of the record in the order dated 14th February, 2006 to the extent that it has denied the workman the benefit of even the minimum wages which have

been notified by the petitioner-University itself.

13. Given the categorization of the employees by the petitioner-University based on educational qualification, it is necessary to consider the respondent's qualifications. The respondent has placed before this Court a photocopy of a Degree of Bachelor of Arts issued in the year 1992 to her which was awarded in the convocation held in 1993 by the Delhi University. Prior thereto, the respondent has also completed a one year course of study from the School of Library Science which resulted in award of a Certificate in Library Sciences by the School of Library Science in the year 1992.

14. It appears that the respondent was employed on the 19th February, 1996 pursuant to a letter dated 2nd February, 1996 on ad hoc basis for the Blind Students' Library on which post she was continued from time to time till her termination (which has been set aside by the impugned labour award).

15. The petitioner has issued a certificate dated 7th January, 1998 to the respondent certifying that she has been working as a "Technical Hand" on a consolidated salary w.e.f. 14th August, 1994. On 20th/23rd August, 1999, the Head of the Department of Music of the Delhi University has also certified that the respondent had been engaged as Casual Worker (Graduate) w.e.f. 15th May, 1999.

16. It is submitted by Learned Counsel for the petitioner that the respondent was working as a daily wager technical hand. In view of the afore-noticed certifications by the Delhi University and its authority/department as well as the nature of her duties, therefore, the respondent would require to be paid at the rate equivalent to the category clerical and non-technical supervisory staff. Such daily wager was required to be paid at the rate at which graduates who are clerical and non-technical supervisory staff observing a five day week are paid with revisions as and when effected.

17. Therefore, with effect from 24th November, 2004, the respondent would be required to be paid at the rate equivalent to that payable to the said clerical staff in terms of the notification dated 9th January, 2008 the relevant extract of which is given below:-

For Clerical & Non-Technical Supervisory Staff employed in
Offices/Department observing five days week.

	Category	Per Month	Per Day
A)	Non Matriculates	Rs. 3663.00	Rs. 166.50
B)	Matriculates but not graduate	Rs. 3918.00	Rs. 178.10
C)	Graduate and above	Rs. 4230.00	Rs. 192.25

18. It is submitted that in terms of the notification dated 9th June, 2010, (page 201 of the paper book) this rate stood revised to Rs. 7,020/- per month. The extract of notification showing the revised rate in the Clerical and Non-Technical Supervisory staff is given below:-

For Clerical & Non-Technical Supervisory Staff employed in
Offices/Department observing five days week

	Category	Per Month	Per Day
A)	Non Matriculates	Rs. 5850.00	Rs. 265.90
B)	Matriculates but not graduate	Rs. 6448.00	Rs. 293.10
C)	Graduate and above	Rs. 7020.00	Rs. 319.00."

19. The above narration would show that the order dated 14th February, 2006 to the extent that it directs the respondent to pay the wages at a rate equivalent to the wages last drawn by her being at the rate of Rs. 1,500/- per month w.e.f. 25th November, 2004 was erroneous. It is accordingly directed that the same shall stand modified and substituted by the following directions:-

(i) The respondent shall be paid wages as per the rates of daily wage clerical staff and non technical (graduates) in terms of the applicable notifications dated 22nd December, 2004; 30th December, 2004; 21st October, 2005; 7th December, 2006; 9th January, 2008; 5th January, 2009; 26th May, 2009; 9th June, 2010 & 26th April, 2011, prescribed by the petitioner w.e.f. 25th November, 2004 for the period and at the rate mentioned in the notification and at the rate specified therein.

(ii) The respondent would be entitled to all revisions which have been effected in the past or may be effected by the petitioner from time to time in the future.

(iii) The arrears in terms of the order shall be paid within eight weeks from today. Month by month payment shall be in terms of the order which has been passed today.

(iv) Copy of the notification(s); calculation of the wages which the respondent was entitled to in terms of this order and the amount payable to her, shall be informed in writing to the respondent.

(v) The petitioner shall be entitled to adjust all amounts which have been paid to the respondent after the 25th November, 2004.

(vi) The respondent shall furnish an undertaking on affidavit on record within two weeks from today to the effect that in case the writ petition is decided against the writ petitioner, she shall reimburse the difference between the last drawn and the wages in terms of the university's notification.

(vii) This application is allowed in the above terms.

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