

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM – LABOUR COURT
NO. II, NEW DELHI**

ID No. 299/2022

Ms. Savita, D/o Sh. Girish Chauhan,

Through- MCD General Mazdoor Union,
Room No. 95, Barrack No. 1/10, Jam Nagar House,
Shahjahan Road, New Delhi-110011.

...Applicant/Claimant

Versus

The Commissioner,

South Delhi Municipal Corporation,

9th Floor, Civic Centre, J.L. Nehru Marg,
Minto Road, New Delhi-110002.

...Management/Respondents

Counsels:

For Applicant/ Claimant:

Sh. B.K Prasad, Ld. AR.

For Management/ Respondent:

Sh. Arvind Kumar, Ld. AR.

AWARD

1. This order shall dispose of the issue no. 1 regarding maintainability of the petition. In view of the fact that the claimant's claims to be workman, though, she is a practicing lawyer, this tribunal on 05.03.2024 had framed the preliminary issue. When the matter was listed for argument, counsel for the claimant stated that he had preferred the writ petition before the Hon'ble High Court of Delhi. Nevertheless, thereafter, he has filed the written notes of arguments as well as case law in support of their contention.

2. Before proceeding further, the fact of this case is required to be reproduced. In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour and Employment, vide its Order No. **L-42011/298/2022-IR(DU)** dated 11.11.2022 has been pleased to refer the following dispute between the employer, that is the Management of South Delhi Municipal Corporation and their workman for adjudication by this Tribunal, terms of which are as under:

“Whether the demands of Ms Savita D/o Shri Girish Chauhan through MCD General Mazdoor Union, Delhi vide letter dated 06.03.2022 to the management of South Delhi Municipal Corporation, New Delhi for wages on the principle of “Equal Pay for Equal Work” and regular status since her initial employment i.e. 16.02.2016 in the category/ pay-scale of Junior Law Officer alongwith all consequential benefits and treating her in duty during her mild protest, are proper, legal and justified? If yes, to what relief as sought vide letter under reference are the disputant entitled and what direction(s), if any, is necessary in the matter?”

3. Claimant had filed her claim statement stating that in the year 2015 management had notified vacancies for the post of Jr. Law Officer in its website and in response to the same she had submitted her application. She was asked to appear in a test and interview conducted by the management. Being found suitable, she was selected through a selection procedure and appointment letter was issued to her. She had joined the office of SDMC (Law Department) as a front door entry w.e.f 16.02.2016 and started work under the direct control, supervision and premises of the management. She was keeping complete track of cases, updating them in legal software of MCD and ensuring drafting of appropriate replies/WS from the department. She claimed to be workman U/s 2(s) of

the ID Act, 1947 as she was not working in any managerial or supervisory capacity and receiving wages as per Section 2(rr) of the ID Act, 1947. Management has violated the provisions of “The Equal Remuneration Act, 1976 which fixes duty of employer to pay equal remuneration to men and women for the same work or work of similar nature. She also submitted that her counterpart i.e. Sh. Ashok Kumar, Jr. Law Officer who worked similar in nature was being paid all the benefits of post while she was getting **Rs. 25,000/- (fixed) + 3500/- (Conveyance Allowance)** for almost six years i.e. since her initial employment i.e. 16.02.2016 to 30.11.2021 which attracts bonded labour system. As such she has made prayer that she be entitled for Equal Pay for Equal Work and regular status since her initial employment in the category and pay-scale of Jr. Law Officer in place of Retainer along with consequential benefits.

4. Management has filed its written statement refuting the claim of the claimant stating that she has placed false and fabricate case. She was initially engaged as a Retainer on 16.02.2016 vide letter no. **CLO/Law (HQ)/SDMC/2016/D-5058** with the conditions specified therein. She claimed wages on the principle of ‘**equal pay for equal work**’ and regular status in the category of pay scale of Junior Law Officer which is bad in the eyes of law as there is no sanctioned post of the Retainer in the corporation. No recruitment rule for the post of Retainer has been made. No such post advertised by the corporation at any point of time. Claimant was neither selected as Junior Law Officer nor offered any appointment letter for the post of Jr. Law Officer. She had worked as a Retainer and the corporation had availed her services as a lawyer/consultant on a fixed fees paid in advance to her services. Claimant cannot claim the wages at par with the Jr. Law Officer as the claimant is a legal practitioner and also indulge in legal practices. She was not restrained to perform her private litigation. Clause-2 of the engagement letter as Retainer only speaks that she will not accept any brief/appear in the court matters against South Delhi Municipal Corporation.

5. After completion of the pleadings vide order dated 20.04.2023, following issues have been framed:

- I. Whether the proceeding is maintainable and the claimant is a workman defined under the Act?
- II. Whether the claimant W.S denied equal pay for equal work by the management during here employment since 16.02.2016 service of the claimant was illegally terminated by the management no. 2?
- III. Whether the claimant is justified in demanding regular employee status from the date of initial employment?
- IV. To what other relief the parties entitled to and from which date?

6. After framing of the issues, examination in chief and cross-examination of the claimant has been recorded.

7. However, after going through the content of the claim petition, it was revealed that claimant claims to be a workman who in fact is a practicing advocate. Her license had not been suspended while she was serving. The very first issue has been framed by this Tribunal regarding maintainability of the claim. However, she claims to be a workman herein.

8. In this regard, definition of section 2(s) of the I.D. Act is required to be reproduced herein:

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as

a consequence of that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or***
- (ii) who is employed in the police service or as an officer or other employee of a prison; or***
- (iii) who is employed mainly in a managerial or administrative capacity; or***
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties, attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]***

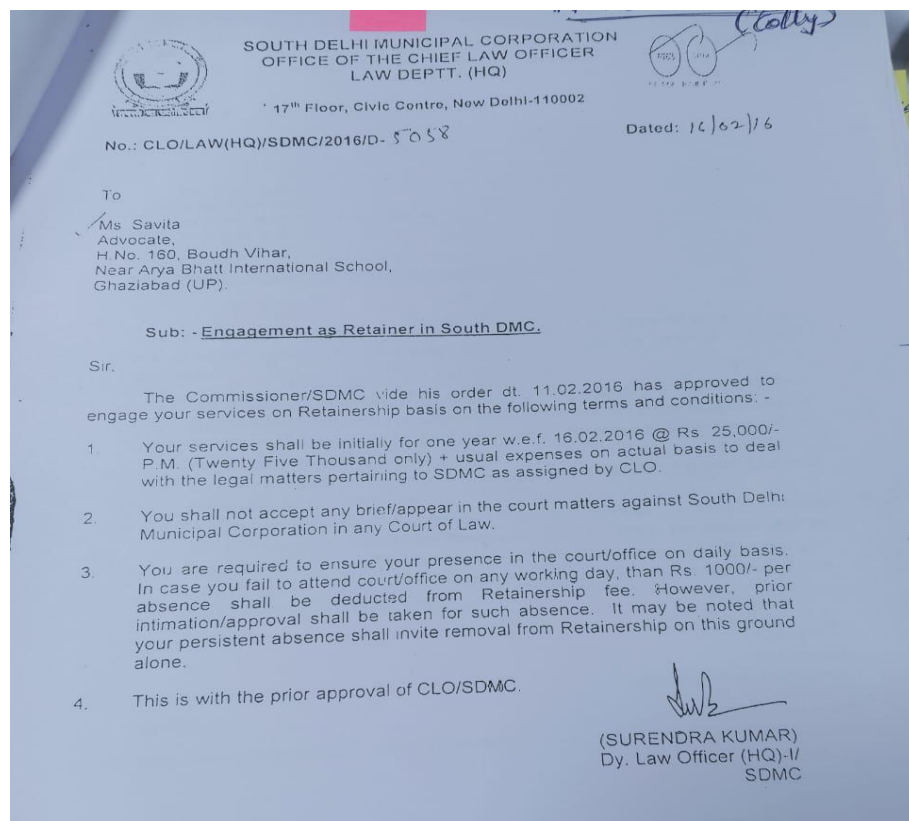
9. Definition of the workman as provided U/s 2(s) is wide enough to include any person as workman in respect of his earning, however, section has itself carved out the exception as Clause-(i), (ii), (iii) and (iv). The 2nd exception stated that, the person who is employed in the police service or as an officer or other employee of a prison is excluded from the category of the workman. The 4th exception stated that, person being employed in a supervisory capacity, drawing wages exceeding Rs. 10,000/- per month is excluded from the category of the workman.

10. Claimant on the strength of this definition claims to be a workman, though, she is a practicing lawyer and has the license to practice issued by the Bar Council of Delhi. She claims that she be given the pay scale of Junior Law Officer (JLO) since her initial appointment because she did the same job as to the work done by Junior Law Officer.

11. In this regard, engagement letters as a retainer issued by the South Delhi Municipal Corporation from time to time to the claimant are

important. Contents of each and every letters are the same except the change of the dates in case of extension of retainership. It has been addressed to **Ms. Savita, Advocate, H. No. 160, Boudh Vihar, Near Arya Bhatt International School, Ghaziabad (UP).**

12. In this regard, engagement letter dated 16.02.2016 is required to be pasted herein:



13. Clause-2 of the said letter stated that she shall not accept any brief/appear in the court matters against the South Delhi Municipal Corporation in any court law.

14. Claimant's AR Sh. B.K Prasad had filed the written submission where he had stated that as per the judgment of Hon'ble Supreme Court of India in the matter of **"D.P Maheswari vs. Delhi Administration & Others"**, it has been held that court shall decide all issues in disputes not in a part manner. He further placed reliance on section 36(4) of the I.D. Act wherein the appearance of the legal practitioner on behalf of the management is debarred. His contention is that in such scenario, where

the legal practitioner has been barred under section 36(4), retainer can appear. Supreme Court of India in the full judgment titled **“Paradip Port Trust vs. Their Workmen”** had stated that the *“Industrial Disputes Act, 1947 is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities and this special Act will prevail over the Advocates Act, 1961 which is a general piece of legislation with regard to the subject matter of appearance of lawyers before all courts, tribunals and other authorities”*. Entire argument of the counsel of the workman revolves around the fact that the inspite of the bar created by section 36(4) of the I.D. Act, claimant can appear before the court on behalf of the MCD as a Retainer, even, in case, claimant took objection for her appearance.

15. Argument advanced by the AR of the workman is mis-conceived. Bar created by Section 36 (4) of the I.D. Act has nothing to do with the present case. Here, the court has to see whether the claimant falls within the definition of the workman as defined under section 2(s) of the I.D. Act. Bar of the Section 36(4) of the Act is applicable only when the workman has not been represented by the legal practitioner. If the workman has been represented by the legal practitioner, then, he cannot take plea that the management would not be represented by the professional lawyer. Here, the claimant had been appearing on behalf of the SDMC. So, for the sake of, if assume that the claimant had been appearing as a professional retainer, claimant cannot take the plea of stopping the management as being represented by legal practitioner. If that has to be happened, then, the management can take the shelter of retainer-ship, which legislature has no intention.

16. Further in the judgment of **Muir Mills Unit of N.T.C (U.P) Ltd. vs. Swayam Prakash Srivastava &Anr, Civil Appeal No. 1839 of 2005** decided on 01.12.2006, Hon’ble Supreme Court of India, referred the case of ***Sonepat Cooperative Sugar Mills Ltd. vs. Ajit Singh (2005) 3 SCC 232*** where the respondent being posted as “Legal Assistant” the qualification for which was degree in law with a practicing license and his duties was to prepare written statements and notices, recording enquiry

proceedings, giving opinions to the management, drafting, filing the pleadings and representing the appellant in all types of cases, was not held to be a workman because the respondent has not been performing any stereotype job. His job involved creativity. Further in the said judgment distinction was drawn between occupation and profession. Occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions i.e. ministry, medicine and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore “professing” to a higher standard of accountability. Thus, the lawyer having a practicing license cannot be termed as a workman.

17. In that above said judgment, the workman was the government employee not as the retainer. He could not take any assignment from anybody except the legal duty assigned to him. In spite of this, he was not held to be a workman. Here, the clause-2 of the appointment letter has given the liberty to the claimant to take the assignment of the cases from the private parties. Bar is only that he shall not appear in any court of law against the South Delhi Municipal Corporation. So, the case of the workman is of lesser footing than that of the case decided by the Hon’ble Supreme Court of India in **Muir Mills Unit of N.T.C (U.P) Ltd. vs. Swayam Prakash Srivastava &Anr, Civil Appeal No. 1839 of 2005.**

18. Further, in this regard, Rule 49 framed **under section 49 of the Advocates Act, 1961** is relevant. Rule 49 of the Advocates Act is required to be reproduced herein:

“49. An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any employment, intimate the fact to the Bar

Council on whose roll his name appears, and shall thereupon cease to practice as an advocate so long he continues in such employment”

19. The aforesaid rule completely prohibits an advocate from taking any fulltime employment during his continuance of practice and provides that if he so takes up employment, he shall inform the Bar Council where upon he shall cease to be in practice as an advocate so long his employment continues.

20. Here, the claimant has not informed the Bar Council for taking the fulltime assignment, requesting to surrender the license. Her job profile is to present the case, preparing written statement and make defense which only a professional can do. Her job involved creativity. For becoming an Advocate, requires extensive training. Advocate has a professional association, ethical code and process of certification. Therefore, being an Advocate, claimant being the retainer or government employee represented the government in the legal manner cannot claim to be a workman.

21. In view of the facts discussed above, claimant does not fall within the definition of the workman. Therefore, preliminary issue regarding maintainability of the claim decides against the workman and in favour of the management.

22. In these circumstances, when the claimant does not fall within the definition of the workman, her claim petition in pursuance to the reference received also stands dismissed. Reference is answered accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the I.D. Act, 1947. Record of this file is consigned to record room.

Date: 10.07.2025

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II