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

**%**  ***Reserved on : 06th May 2025***

***Pronounced on : 30th May 2025***

\+  W.P.(C) 6213/2012

SMT. ZUBEDA .....Petitioner

versus

COMMISSIONER MCD AND ORS .....Respondents

\+  W.P.(C) 6214/2012

CHANDER MOHINI .....Petitioner

versus

COMMISSIONER MCD AND ORS .....Respondents

\+  W.P.(C) 6215/2012

JAYANTI .....Petitioner

versus

COMMISSIONER OF MCD AND ORS .....Respondent

\+  W.P.(C) 6216/2012

SMT. ZARINA .....Petitioner

versus

COMMISSIONER OF MCD AND ORS .....Respondents

+ W.P.(C) 6217/2012

NAZMA .....Petitioner

versus

COMMISSIONER OF MCD AND ORS .....Respondent

+ W.P.(C) 6218/2012

BASANTI .....Petitioner

versus

COMMISSIONER OF MCD AND ORS .....Respondent

+ W.P.(C) 6220/2012

MEENA BEGUM .....Petitioner

versus

COMMISSIONER MCD AND ORS .....Respondent

+ W.P.(C) 5346/2013

LAD KUMARI .....Petitioner

versus

COMMISSISONER EAST DELHI MUNICIPAL CORPORATION OF DELHI & ORS. .....Respondents

**Presence**: Mr. R.K. Saini and Ms. Saloni Mahajan, Advocates for petitioners

Mr. Rakesh Mishra, Standing Counsel for MCD.

**CORAM:**
**HON'BLE MR. JUSTICE ANISH DAYAL**

# JUDGMENT

**ANISH DAYAL, J.**

**1.** These petitions have been filed by workers seeking reinstatement in the Municipal Corporation of Delhi ('**MCD'**) having been employed in 1995 and setting aside of Award dated *5th September 2011* passed by the *Labour Court No. XVI, Karkardooma Courts, Delhi* in *ID No. 183/07; ID No. 170/07, ID No. 173/07, ID No. 172/07, ID No. 176/07, ID No. 174/07, ID No. 175/07* and *ID No. 169/07* in *W.P. (C) 6213/2012, W.P. (C) 6214/2012, W.P. (C) 6215/2012, W.P. (C) 6216/2012, W.P. (C) 6217/2012, W.P. (C) 6218/2012, W.P. (C) 6220/2012* and *W.P. (C) 5346/2013*, respectively.

**2.** Petitioners were recruited to work as *Basti Sevikas* with the MCD. The job of a *Basti Sevika* was to provide medical aid to pregnant women, to motivate females for family planning and to motivate people to prevent the spreading of diseases. Petitioners were duly recruited from JJ clusters and trained through training courses and were given identity card and certificates by the Director's Training Centre, MCD.

**3.** This recruitment was in the context of MCD having undertaken implementation of *India Population Project ('**IPP-VIII**')* for provision / augmentation of basic health care service primarily for the residents of *J.J. Clusters* with assistance from the *World Bank*. The project was initially approved by the competent authority on 14th September 1993. The outlay of the project was revised mid-term by the World Bank in June-July, 1998 and the period of the project was also extended to 30th June 2001. Through the project, MCD set up 6 Maternity Homes-Cum-Health Centers, 21

Health Centres and 106 Health posts, and the project came to an end on 30th June 2001.

**4.** The *Ministry of Health and Family Welfare, Govt. of India vide* letter dated 20th July 2001 conveyed the approval for continuing / taking up new (additional) activities approved by the World Bank for one more year till 30th June 2002. This position was also placed before the Standing Committee of Corporation *vide* letter dated 21st August 2001 and was approved on 15th October 2001. It was stated by the petitioners that since the main project infrastructure became the "*committed liability of MCD*", a provision of Rs.5 Crores was made by the Corporation in its Non-Plan (Revenue) Budget of the year 2002-2003 on an *ad hoc* basis. Since then the expenditure on the salaries of the staff and other operational expenditure was being met out of the above said budget provisions.

**5.** The engagement of *625 Basti Sevikas* on payment of *Rs. 500/- p.m.* was also approved at the time of the initial 1993 approval and this continued through the programme. It was then recommended that the proposal for sanctioning continuation for the post, including engagement of *Basti Sevikas* and payment to *Dais* on permanent basis beyond 30th June 2001. The literature of Project IPP-VIII noted, "*the services of Basti Sevikas will be contracted initially for a period of 3 years. After 3 years their contract shall be considered for promotion to the job of ward Ayahs in newly coming Hospitals. It is envisaged that about 10% of the Basti Sevikas will be provided the avenue for promotion*."

**6.** Despite this contract, petitioners were shocked when their services were illegally terminated on various dates from April 2004 by the

management without assigning any reason, without giving any notice and without holding any inquiry. A sum of Rs.500/- per month was being paid, which was less than the minimum wages, and therefore, the management was ought to be liable to pay wages at the rate of minimum wages. No retrenchment compensation, notice pay or salary was paid. Petitioners filed *W.P. (C) No.1786-97/2005* collectively through the Delhi High Court Legal Services Committee.

**7.** Respondent's contention was that the dispute could be properly agitated under the *Industrial Disputes Act, 1947* (**'ID Act'**) since it required examination of disputed question of facts. By order dated 20th September 2005, this Court directed the case ought to be agitated under *Industrial Disputes Act*.

**8.** This resulted in impugned Award dated 5th September 2011 by the Labour Court holding that the claimants/petitioners were not '*workmen'* as defined under *section 2(s) of the ID Act* and hence, not entitled to the benefits of the ID Act. The Labour Court further held, that the dispute was not an *Industrial Dispute* and since the claimants/petitioners were not workmen, it had no jurisdiction to give findings on whether the claimants/petitioners were entitled to any relief.

**9.** It is essentially contended that the project had acquired a '*permanent*' character and was being continued by the MCD, even after the funding by the World Bank ended on 30th June 2001. The respondents were appointing new *Basti Sevikas/Ayas*, whereas, the services of the petitioners had been terminated illegally. It is alleged that new

recruitments of *Ayas* was done after taking illegal consideration and not a single *Basti Sevika* was considered, let alone promoted.

**10.** Accordingly, directions were sought in the Writ Petition to set aside termination of services, their reinstatement with full back-wages at minimum wages, continuity of services and all consequential benefits and with the differential between the minimum wages and the scale of *Ayas* with effect from 1999.

***Submissions on behalf of Petitioners***

**11.** *Mr. R. K. Saini*, Counsel for the petitioners made the following submissions:

**11.1** Reference was made to order dated 20th September 2005 passed in *W.P. (C) 1786-97/2005* by which this Court had remanded back the matter to be considered as an Industrial Dispute and decided by an appropriate forum. *Mr. Saini* contended that an assertion was made by MCD's counsel that '*disputes can be properly agitated under the ID Act since it required examination of disputed question of facts'*. Considering the submission, the Court had directed accordingly, and disposed of the petition. The Court had further stated that, "*In case the petitioners raise an industrial dispute, the appropriate Government shall consider and pass suitable orders within a period of two months from the date of raising of such dispute*". Emphasis was laid on assertion of MCD's counsel which was recorded as, "*Upon completion of these projects, it is alleged, the petitioners' services were discontinued."*. It is therefore, stated that implication was that it was an '*industrial dispute*' and petitioners were recruited as proper '*service'*.

**11.2** Reference was made to Commissioner's letter dated 25th September 2002, which noted that the IPP-VIII project for provision/augmentation of basic health care services for residents of J.J. Clusters with assistance from World Bank was approved in 1993 at a cost of Rs.35 Crores, later revised at Rs.47.25 Crores, and then for Rs.73.84 Crores in June-July 1998. The period of project was extended to 30th June 2001. *The Ministry of Health and Family Welfare Govt. of India*, conveyed the approval for continuing new activities till 30th June 2002 and the outlay for the project had been enhanced to Rs.75.94 Crores. This was approved by the Standing Committee/ Corporation *vide* Resolution No. 349 dated 15th October 2001. The Commissioner's letter stated, "*Since, the main project infrastructure became the committed liability of MCD w.e.f. 01.07.2001, [except for new (additional) activities, detailed in para two above] a provision of Rs.5 Crores was made by the Corporation in its Non-Plan (Revenue) Budget of the year 2002-2002 on ad hoc basis under the budget Head VI-B-O-VII. Since then the expenditure on the salaries of the staff and other operational expenditure is being met out of the above said budget provisions.*".

**11.3** He further noted in *paragraph 6* of the letter that, "*It may also be added that engagement of 625 Basti Sevikas on payment of Rs. 500/- p.m. and a payment of Rs. 15/- per delivery was also approved by the competent authority at the time of initial approval of the project in Sept. 1993 and this practice is also required to be continued in the interest of service delivery programme*." It is therefore, contended that it was a *continuous activity* and petitioners have already served for 9-10 years and have been

terminated illegally and without following the proper procedure and without being paid due emoluments.

**11.4** In *paragraph* 10 of the letter, he further noted, "*Keeping in view the above clarifications, it is recommended that the proposal for sanctioning continuation for the posts mentioned in the statement at Annexure 'A' (Col. V) including engagement of Basti Sevikas and payment to Dais (mentioned in Para 6), on permanent basis beyond 30-6-2001 and charging of the expenditure to Non-Plan budget as also inclusion in the schedule of establishment may please be placed before the Standing Committee/Corporation for approval and be treated as an item of Urgent Business.*"

**11.5** He stated that in this context, particularly the stand taken by the respondent before this Court in the previous Writ Petition, the Labour Court could not have framed issues on maintainability, but instead decide the core industrial disputes. To the contrary, the Labour Court framed three issues and holding the petitioners to be not '*workers'* and it not being an '*industrial dispute*', did not decide whether they were entitled to relief or not. Therefore, the petitioners were seeking remand of the matter, in order to be decided properly.

***Submissions on behalf of MCD***

**12.** MCD's counsel contended that the reference by the Court to order dated 20th September 2005, was only to assess the disputed questions of fact and could not be considered as determination on question of whether petitioners were covered within the definition of '*workmen'* and the dispute was an '*industrial dispute*.'

**13.** The findings in the Award could be culled out as under:

**13.1** Petitioners had been engaged for a project floated by the Govt. of India IPP-VIII and were asked to work as *ASHA workers* as per the scheme applicable subsequently, but they refused.

**13.2** Petitioners were engaged in the project, and the project report as well as the Commissioner's letter, was perused by the Labour Court. Most of the petitioners did not find place in the approved post in the project report nor in the Commissioner's letter. It was concluded that petitioners were not working at any sanctioned post nor any such post had been created.

**13.3** The report of IPP-VIII mentioned that services of *Basti Sevikas* will be contracted for a period of three years and therefore, there could be no consistent right for petitioners.

**13.4** The project was ending on 30th June 2001 and was extended for a period of one year till 30th June 2002; there was no right to claim any vested right after the same.

**13.5** Petitioners were *volunteer health workers* and could not be termed as '*workmen'* under *Section 2(s) of the ID Act*. Petitioners were engaged under health services for community and were chosen from the cluster that they were residing in. The nature of work of petitioners was '*voluntary*' from the very beginning and not part of the job *cadre*.

**13.6** Petitioners were given remuneration called '*honorarium'* and was not a '*salary'*. This allowed petitioners to take a job elsewhere, since the

essential job was a '*voluntary*' job and required only 3-4 hours of work in a day, of their choice.

**13.7** During the scheme, petitioners were given Rs.15/- per delivery of the cluster where they were working; the said amount was previously being given to a *Dai*, and therefore, petitioners were also working as *Dai*. No *cadre* of *Basti Sevika* had been mentioned in IPP-VIII project.

**13.8** Cross examination of '**WW-1**' was referred to, where one of the petitioners confirmed that no appointment letter had been given and that he had been working as a *Dai* as well as a *Basti Sevika.* She had no knowledge whether an advertisement had been published for the post of *Basti Sevikas.* However, *Dr. Sharda,* along with *Sh. BP Singh* from MCG, had come for the interview. She confirmed that no application was taken by *Dr. Sharda* and only ration cards were taken for address proof.

**13.9** Reference was made to the project report, which clearly stated that the *Basti Sevika* was selected from the community, trained specially and entrusted with the responsibility of health promotion. For this purpose, she was given a health kit and a drug kit at the end of the training period. Her job was to use the help of community members and conduct a census. The report stated that *Basti Sevika* would spend three hours for carrying out her duties in the community and work in liaison with the community members in the health team. Half their time should be spent in visiting the families under her care. In her day-to-day activities, she was to take the help of the area *Auxiliary Nurse Midwife* ('**ANM**'). The activities to be carried out by the *Basti Sevikas* were categorized broadly into *immunization, child care, maternal care, family welfare, treatment for*

*minor illness, referral services, education* and *record keeping*. *Basti Sevikas* were to be made a monthly honorarium of Rs.500/-.

**13.10** The *Basti Sevika* was defined as a '*volunteer*' and there was only 3 hours per day for health education and motivation. It is reiterated that remuneration was an '*honorarium'* and not a '*salary*'. The services were contracted initially for a period of three years, and after three years, the contract was to be considered for promotion of the job of ward *Aya* .

**13.11** Counsel for the MCD also highlighted the list of posts, which were provided as part of the report, which did not include the specific post of *Basti Sevikas* and which had been approved.

**13.12** Reference was also made to the cross-examination of '**MW-1**', *Dr. Ravi Prakash*, who deposed that presently less than 100 *Basti Sevikas* were working and were chosen as per the project. He stated that the *Basti Sevikas* are being replaced by *ASHA workers* as per the policy of the Delhi government. The *ASHA workers* were being recruited by the Delhi government on the *NRHM project* and the payments are being made by the Delhi government and therefore, no *Basti Sevikas* were being engaged. He denied the suggestion that 10% *Basti Sevikas* were to be promoted as ward *Ayas*. He admitted that I-cards and training certificates had been given and the *Basti Sevikas* had worked approximately for about 8 to 9 years; he admitted that they worked as *voluntary health workers* and were on an honorarium.

**14.** *Counsel for MCD* placed reliance on the following decisions:

**14.1** ***Ram Singh & Ors. v Union Territory, Chandigarh & Ors.*** (2004) 1 SCC 126.

> "*14. We have considered the arguments advanced on behalf of the employees based on the terms of the contract.*
>
> *15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)*
>
> *16. Normally, the relationship of employer and employee does not exist between an employer and a contractor and the servant of an independent contractor. Where, however, an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of such a contractor. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Whether a particular relationship between employer and employee is genuine or a camouflage through*

*the mode of a contractor, is essentially a question of fact to be determined on the basis of the features of the relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact, it has to be raised and proved before an industrial adjudicator. Conclusions (5) and (6) of the Constitution Bench decision of this Court in Steel Authority of India (2001) 7 SCC 1 are decisive for purposes of this case, which read as under:*

> *"125. (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.*
>
> *(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of the contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable*

*and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."*

(emphasis added)

**14.2** ***State of H.P. v Suresh Kumar Verma*** (1996) 7 SCC 562

"*3. It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules.*

*4. Mr Mahabir Singh, learned counsel for the respondents, contended that there was an admission in the counter-affidavit filed in the High Court that there were vacancies and that, therefore, the respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the Rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to Rules is a precondition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee.*"

(emphasis added)

**14.3** ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v State of T.N.*** (2004) 3 SCC 514

"***Determination of relationship***

*32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard-and-fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test — be it control test, be it organisation or any other test — has been held to be the determinative factor for determining the jural relationship of employer and employee.*

*33. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly an independent entrepreneurial dealing.*

***Tests***

*34. This Court beginning from Shivnandan Sharma v. Punjab National Bank Ltd. [(1955) 1 LLJ 688 : AIR 1955 SC 404] and Dharangadhra Chemical Works Ltd. v. State of Saurashtra [(1957) 1 LLJ 477 : AIR 1957 SC 264] observed that supervision and control test is the prima facie test for determining the relationship of employment. The nature or extent of control required to establish such relationship would vary from business to business and, thus, cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor. Instances are galore there where having regard to conflict in decisions in relation to similar set of facts, Parliament has to intervene as, for example, in the case of workers rolling bidis.*

*35. In a given case it may not be possible to infer that a relationship of employer and employee has come into being only because some persons had been more or less continuously working in a particular premises inasmuch as even in relation thereto the actual nature of work done by them coupled with other circumstances would have a role to play.*

*36. In V.P. Gopala Rao v. Public Prosecutor, A.P. (1969) 1 SCC 704 this Court said that it is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen and there is no abstract a priori test of the work control required for establishing the control of service. A brief résumé of the development of law on this point was necessary only for the purpose of showing that it would not be prudent to search for a formula in the nature of a single test for determining the vexed question.*

***Relevant factors***

*37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.*

*38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.*

*…*

*"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him."*

(emphasis added)

***Analysis***

**15.** To appreciate the matter, it may be useful to just run through the sequence of events.

**16.** ***First***, *W.P. (C) No.1786-97/2005* was filed by the *Basti Sevikas* claiming reinstatement and regular appointment with MCD. They were engaged on 1st January 1995, initially for a contracted period of three years, which was then extended for some time; mostly they worked for about 8 to 9 years but eventually their services were terminated in April 2004.

**17.** ***Second***, by order dated 20th September 2005, passed by the Single Judge of this Court, while disposing of the Writ Petition, MCD's response had been recorded, in that petitioners were never given employment but were merely asked to perform certain duties pursuant to its projects, to spread awareness. When the project was completed in one area, petitioners were assigned to work in other areas. For this, they were given a monthly honorarium of Rs.500/-. On completion of the projects, the services were discontinued. The submission had been recorded by the MCD's counsel in the following terms, along with the directions which were passed by the Court in order dated 20th September 2005 and are extracted as under:

> *"3. Learned counsel for the respondent submits that the disputes in this case can be properly agitated under the Industries Disputes Act since they required examination of disputed questions of fact, namely as to the engagement / appointment of the petitioners, their service etc.*
>
> *4. Having considered all the contentions, I am of the view that the dispute in this case ought to be agitated before the appropriate forum under the Industrial Disputes Act. The petition is accordingly disposed off granting liberty to the petitioners to raise an industrial dispute. It is open to the*

*petitioners to seek assistance of the Delhi Legal Services Authority in this regard. In case the petitioners raise an industrial dispute, the appropriate Government shall consider and pass suitable orders within a period of two months from the date of raising such dispute."*

(emphasis added)

**18.** ***Third***, the matter then went to the Labour Court and was agitated in *ID No.183/2007*; the '*terms of reference*' were as under:

*"Whether there existed an employer-employee relationship between the management and Smt. Zubeda w/o Nabi Hasan who was taken as female Community Volunteer to provide health education to community and paid honorarium and if so, whether her services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing Laws/Govt. Notification and to what other relief is she entitled and what directions are necessary in this respect?"*

**19.** ***Fourth***, the Labour Court then framed the following issues:

*"1. Whether claimant is not a workman defined under Section 2(s) of ID Act?*

*2. Whether the claimant is entitled for relief as claimed in the claim petition?*

*3. Whether the dispute raised by the claimant is not an Industrial Dispute?*"

**20.** ***Fifth***, after examining the records and the evidence before it, as regards *Issue no.1*, the Labour Court decided that it could not be held, that the petitioners were workmen under *Section 2(s) of the ID Act* and held that they are not entitled to the benefits of the ID Act. As regards *issue no.3*, based on the decision in *Issue no.1*, it was held that the dispute was

not an Industrial Dispute and therefore, *Issue no.2* could not be decided by the Labour Court.

**21.** ***Sixth***, assailing the said order of the Labour Court, these petitions have been filed. *Mr. R K Saini*, counsel for petitioners effectively canvases that once the MCD's counsel had submitted before this Court in original *W.P. (C) No.1786-97/2005*, that the matter can be considered by the Industrial Tribunal under ID Act, it amounted to a concession and therefore, the Labour Court could not have framed *Issue nos.1* and *3* that ended up in an adverse finding. He therefore demanded, that the same be remanded back to the Labour Court, in order to give finding on *Issue no.2*, as to the relief i.e. whether the petitioners were entitled for relief as claimed in the petition.

**22.** The Court is therefore, faced with a situation whether to endorse the Labor Court's findings on *Issue nos. 1* and *3*, on the '*maintainability of the claims*' under the *Industrial Disputes Act* or whether to set it aside, holding that petitioners are entitled to sustain their claim under the *ID Act* and the Labor Court to then decide the issue as regards the merits of their claim. After examining the documents, hearing the submissions and considering the case laws in this regard, the Court is inclined to lean towards the former.

**23.** The argument of *Mr. R.K. Saini* is that since the MCD's counsel had made a concession, the matter would have to be treated as maintainable under the *ID Act* and the Labour Court could not have framed *Issue nos. 1* and *3* regarding the maintainability. This argument is fallacious and unsustainable. Concession given by the counsel cannot

subvert the law in this regard. Merely by concession of MCD's counsel, as per petitioners' counsel, the case of petitioners would fall within the rubric of *Industrial Disputes Act*, cannot be maintained. It is another issue whether concession was indeed made by MCD's counsel or not.

**24.** A perusal of *para 3* of order dated 20th September 2005 (*extracted in para 17 above*) would show that it was not really a concession but a submission that these aspects can be considered by the Labour Court. The directions of this Court, in *para 4* of order dated 20th September 2005, also granted liberty to petitioners to raise an '*Industrial Dispute*'. The Court, in no manner had reached the conclusion that the case set up by petitioners would fall within the definition of '*Industrial Disputes*'.

**25.** More importantly, the '*terms of reference*' (*extracted in para 18 above*) fairly framed the question whether there existed an '*employer-employee*' relationship between the management and the petitioners, who had been taken up as community volunteers, paid an honorarium and "**if so**", whether their services had been terminated illegally and what are the reliefs they are entitled to.

**26.** This reference was never challenged by the petitioners, at least, the same has not been contended by petitioners' counsel. If there was an issue of framing of terms of reference, the same ought to have been agitated at the first go by the petitioners. It is relevant to refer to the decision in ***Uttar Bihar Gramin Bank v Ramu Mochi*** 2024 SCC OnLine Jhar 1131, wherein while relying on the decision of the Apex Court in ***National Engg. Industries Ltd. v State of Rajasthan*** (2000) 1 SCC 371, it was held that "*Reference*" on the grounds of delay ought to have been challenged

before the final Award and that the Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference; it cannot go into the question on validity of the reference. The relevant paragraphs of the said decision, are extracted as under:

> *"14. Having heard learned counsel for the parties and after going through the documents available on record, at the outset we would like to deliberate on the issue of maintainability. We are of the considered opinion that "Reference" on the grounds of delay ought to have been challenged before the final Award. The maintainability was never challenged and for the first time the same has been raised before us.*
>
> *The Industrial Tribunal is a creation of statute and gets its jurisdiction on the basis of Reference and cannot examine the validity of Reference. As stated herein above, the Reference was never challenged prior to Final Award and the Management participated in the proceedings.*
>
> *In this regard, reference may be made to the judgment rendered in the case of National Engineering Industries Limited v. State of Rajasthan reported in (2000) 1 SCC 371; wherein the Hon'ble Apex Court in paras - 24 & 27 has held as under: —*
>
> > *"24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in*

*existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinised. Subsections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who*

*belong to the minority union which had objected to the same. The recognised union having the majority of members is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act," as pointed out in the case of P. Virudhachalam v. Lotus Mills [(1998) 1 SCC 650 : 1998 SCC (L&S) 342]. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out.*

*27. The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the Management, the Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands,*

> *which are left out, should be specifically mentioned in the settlement. It is not the contention of the Workers' Union that the tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such was not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings."*
>
> (emphasis added)

**27.** Not having done so, the issues which were framed by the Labour Court, were therefore, acceptable and valid. The Labour Court was acting under the terms of reference and therefore, framed the issues of maintainability as well, particularly *Issue nos. 1* and *3*. There being no finding by this Court or otherwise by any Court, regarding whether the petitioners would fall on this side of the fence or the other, in that whether they would be considered under the principles of service law or under the ID Act, it was really the intention of the Court in disposing of the petition i.e. *W.P. (C) 1786-97/2005*, that these aspects would also be considered by the Labour Court. The argument of *Mr. R.K. Saini* therefore, that this issue was no longer *res integra* post the purported concession by MCD's counsel, was not acceptable to the Court.

**28.** It therefore, now devolves upon the Court, to assess the findings of the Labour Court regarding '*maintainability*' under the *Industrial Disputes Act*. In this regard, the following facts are necessary to enlist:

**28.1** The witnesses for both the management and workmen had been examined before the Labour Court; their evidence and testimonies had been taken into account by the Labour Court, particularly in *paras 5 to 7* of the impugned award. It therefore, cannot be said that the Labor Court arrived at the finding of '*non-maintainability*' in a cursory or a summary manner.

**28.2** The arguments of both the parties, of the petitioners and the management, were also appreciated by the Labour Court. While the facts and circumstances are recorded in *paras 2 to 3* of the impugned Award, the assessment of the arguments is noted in *para 8* of the impugned Award. A perusal of the same bears out that all the aspects which had been agitated before this Court, had been canvassed before the Labour Court as well.

**28.3** Even as for the petitioner's case, as canvassed by *Mr. R.K. Saini*, certain aspects are admitted are as under:

(i) Petitioners had been engaged for a project floated by the Government of India i.e. *IPP-VIII*. The project got over on 30th June 2001 and after a couple of renewals, was extended till 30th June 2002.

(ii) Petitioners had been selected from a community. The concept of *Basti Sevika* was conceived as '*Community Based Health Volunteer*'. The volunteer was trained to function in the community in close relation with the Health Care System and served the bridging role between the health channel and bringing preventive, promotive and curative health services closer to the community; was provided with a health kit and a drug kit at the end of the training period;

(iii) The *Basti Sevika* was to spend only three hours carrying out her duties in the community and half the time visiting the family under their care;

(iv) The *Basti Sevika* was to be given for monthly honorarium of Rs. 500/-;

(v) The *Basti Sevika* could also perform the role of a *Dai /* mid-wife and would be paid Rs. 15/- per delivery.

(vi) It was noted in the project proposal, that *Basti Sevika* was '*not a full-time worker*' and could continue to work elsewhere for a living, if required.

(vii) The proposal also noted that the payment was an '*honorarium*' and not a '*salary*' and the selection was from within the *jhuggi* and *bastis* with the help of ANM's (*Auxiliary Nurse Midwife*) and *opinion leaders* within the community.

(viii) If the *Basti Sevika* was not found to be performing her duty in a satisfactory manner, a medical officer could select another volunteer from the community for this purpose;

(ix) The project funded by the World Bank had offered the petitioners to work as *ASHA workers* as per the scheme, but they failed to join as *ASHA workers*.

**29.** All these aspects had been taken into account by the Labour Court and some of the findings have been extracted as under:

(i) "*The post of the claimant does not find place in approved post in the Project Report. Similarly, in a letter by Commissioner, MCD to the Secretary, Health, Delhi Administration, the post of*

*the claimant does not find place. This shows that the claimant was not working under any sanctioned post, which were mentioned in the IPP VIII report nor in the letter of the Commissioner. MCD to the Secretary. Health. Delhi Administration and no post was created for which claimant alleged to have been worked."*

(ii) "*The World Bank funding / project ended on 30.06.01. it was extended for one year i.e. upto 30.06.02. Since the claimant worked under the project after ending of the project, she has no right to claim*."

(iii) "*This shows that the nature of the work of the claimant was voluntarily volunteer from the very beginning and was not part of job cadre created under IPP VIII*."

(iv) *"For a claimant to prove that he was workman, he has to show that he was paid wages/salary from the management. When report states that payment is only honorarium and not salary, the claimant cannot termed as workman U/s 2(s) of the I.D. Act. The reason of giving honorarium of Rs. 500/- is mentioned on page 173 of the report wherein it is stated that since the Basti Sevika works for maximum 3-4 hours per day, amount of Rs. 500/- is the minimum essential requirement for the functioning of the scheme and was justified in view of the quality and quantity of the work. It is further mentioned in the report that since the work of Basti Sevika is honorary and at voluntarily level, Basti Sevika can take job elsewhere. This is not possible for a person, who is a workman under the provisions of I.D. Act. A workman can work only at one place. However, opposed to this, Basti Sevika, can take up the job elsewhere as there was no fixed time for the work of Basti Sevikas and they had to devote only 3-4 hours of their choice. It may be during any time of the day. Hence, the condition, their working and payment of honorarium excluded the Basti Sevika from the term of workman as defined u/s 2(s) of the I.D. Act."*

(v) *"The Scheme sometime stated that they are working as Basti Sevikas and sometime stated that they are working as Dai. No cadre of Basti Sevika or Dai has been mentioned in the cadre created under the IPP VIII or in the letter from the Commissioner MCD to the Secretary, Health*."

**30.** The only counter presented by *Mr. R.K. Saini* to this was that the project was extended from time to time and the Standing Committee of the Corporation permitted the extension stating that the project became '*committed liability of MCD*' and a provision of Rs.5 crores was made by the MCD under its non-planned / Revenue budget on an *ad hoc* basis.

**31.** In the opinion of this Court, this cannot give any leverage to petitioners claiming that they were industrial workers and had an '*employer-employee*' relationship. The *committed liability of MCD* is merely a phrase which is to be read in context adverting to resource planning but not creating a cadre of *Basti Sevikas* or regularising appointments or creating a policy with respect to the same.

**32.** Other argument raised was that new recruitment of *Ayas* was being done and not a single *Basti Sevika* had been considered, let alone promoted. In this regard, the prayer made was for reinstatement with full back wages and minimum wages, continuity of services and all consequential benefits with differential being the minimum wage and the scale of *Ayas* with effect from 1999.

**33.** Accordingly, the finding of the Labour Court that the petitioners were not workmen under *Section 2(s) of the ID Act* and not entitled to benefits under ID Act and dispute raised is not an industrial dispute, therefore stands affirmed. However, this would be with regard to *prayer (a)* of the respective Writ Petitions. For ease of reference, *prayer (a)* in *W.P.(C) 6213/2012* is extracted as under:

> "*(a) Issue a Writ of "Certiorari" or any other appropriate writ, order or direction setting aside the award dated*

*5.09.2011 passed by the Ld. Labour Court No. XVI, Karkardooma Courts, Delhi in I.D. No. 183/07*."

**34.** As regards *prayers (b)* to *(e)*, extracted below, these aspects would still need to be considered, *de hors* the aspect of ID Act. The said prayers are extracted as under:

> *"(b) Set aside the termination of services of the petitioner as illegal and unjustified and*
> *(c) Direct the respondents to reinstate the petitioner in service along with full backwages (@ minimum wages), continuity of service and all consequently benefits*
> *(d) Direct that the petitioner be paid the differential amount between the minimum wages and the scale of aaya with effect from 1999 as claimed in her claim statement.*
> *(e) Grant any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case*."

**35.** Accordingly, list this petition on 25th August 2025.

**36.** Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**
**JUDGE**

**MAY 30, 2025/SM/NA**