

I. T. BRANCH
Revenue Department
Diary 229
Date 09/09/2020

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
REVENUE DEPARTMENT: DELHI
(GENERAL ADMINISTRATION BRANCH)
5, SHAM NATH MARG, DELHI-54.

No. F.1(40)/GA/DC/2020/1264

Dated: 08/09/2020

MEETING NOTICE

Subject : Implementation of Industrial Tribunal Awards in ID No. 39/2006 dated 27.04.2006, 63/2003 dated 24.03.2006 and 45/2001 dated 04.12.2004, which were upheld subsequently by Hon'ble High Court of Delhi in its judgement dated 28.03.2019, in W.P.(C) No. 4402/2007, 10994/2006 & 17555/2005, respectively, in the matter of regularization of contractual MPCC caretakers

The undersigned is directed to convey that the Pr. Secretary (Revenue)/Divisional Commissioner would chair a meeting of the District Magistrates concerned and nominated officer (s) of the Development Department on the subject cited above, on **10.09.2020 at 12.30 pm** at Conference Room, Environment Department, Govt. of NCT of Delhi, 6th Floor, C-Wing, Delhi Secretariat, I.P. Estate, New Delhi - 110002. The attendees are requested to make it convenient to attend the meeting.

A Status Note on the issues relevant to the aforesaid meeting is enclosed.

Encl: As above


(ANIL SIROHI)

SUB DIVISIONAL MAGISTRATE - III (HQ)

To

1. District Magistrate, North District, with a request to attend the above meeting.
2. District Magistrate, South West District, with a request to attend the above meeting.
3. District Magistrate, North West District, with a request to attend the above meeting.
4. District Magistrate, West District, with a request to attend the above meeting.
5. Dy. Director (RD), O/o the PD (RD), Govt. of NCT of Delhi, Room No. 411-412, 4th Floor, ISBT Building, Kashmere Gate, Delhi - 110006, with a request to depute the officer (s) so nominated by the Development Department for the above meeting.
6. Secretary, Finance Department, 4th Level, Delhi Secretariat, I.P. Estate, Delhi, with a request to nominate an officer from the Finance Department for the above meeting.

No. F.1(40)/GA/DC/2020/1264

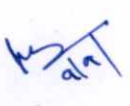
Dated: 08/09/2020

Copy to:-

1. PA to Pr. Secretary (Revenue)/Divisional Commissioner, 5, Sham Nath Marg, Delhi.
2. Deputy Commissioner - III (HQ), Revenue Department, 5, Sham Nath Marg, Delhi.
3. System Analyst (IT), Revenue Department, 5, Sham Nath Marg, Delhi, with a request to upload this meeting notice on the website of the Revenue Department.


(ANIL SIROHI)

SUB DIVISIONAL MAGISTRATE - III (HQ)


a/n
A/P

Status Note

Status Report on implementation of Industrial Tribunal Awards in ID No. 39/2006 dtd. 27.04.2006, 63/2003 dtd. 24.03.2006 & 45/2001 dtd. 04.12.2004, which were upheld subsequently by Hon'ble High Court of Delhi in its judgement dated 28.03.2019 in W.P.(C) No. 4402/2007, 10994/2006 & 17555/2005, respectively, in the matter of regularization of contractual MPCC caretakers

1. In the matter of implementation of Industrial Tribunal Awards in ID No. 39/2006 dated 27.04.2006, 63/2003 dated 24.03.2006 and 45/2001 dated 04.12.2004 which were upheld subsequently by Hon'ble High Court of Delhi in its judgement dated 28.03.2019 in W.P.(C) No. 4402/2007, 10994/2006 and 17555/2005, the petitioners have filed three W.P. (C) in Hon'ble High Court of Delhi (Annex 1, 2 and 3) citing willful inaction and failure on the part of Respondent No. 1 (SDM, Kotwali) in executing recovery against various recovery certificates issued in respect of awards in ID No. 39/2006, 63/2003 and 45/2001.
2. A brief chronology of the above three Industrial Disputes/Awards and status of their subsequent implementation is as under:
 - i. In 2001, 2003 and 2006, the contractual caretakers working in MPCCs (Multipurpose Community Centers) in Delhi, under the office of Project Director (PD), Department of Rural Development (RD), GNCTD, filed 3 petitions before the Asst. Labour Commissioner, Govt. of NCT of Delhi, asking for regularization of their services. The petitioners raised industrial disputes (IDs) - ID No. 39/2006, 63/2003 and 45/2001, which were decided in three Awards dated 27.04.2006, 24.03.2006 and 04.12.2004, whereby PD (RD) was directed to regularize the workmen concerned in the pay scale as applicable to the post of caretaker with all consequential benefits.
 - ii. The above three Awards were challenged by PD (RD), GNCTD through filing of W.P.(C) No. 4402/2007, 10994/2006 and 17555/2005 in Hon'ble High Court of Delhi which were disposed of in Hon'ble High Court's Order dated 28.03.2019.
 - iii. The Hon'ble High Court of Delhi's Order dated 28.03.2019 was challenged by PD (RD), GNCTD through filing of SLP No. 34164/2019 before Hon'ble Supreme Court of India which was dismissed vide Hon'ble Supreme Court's Order dated 14.10.2019.
 - iv. The petitioners sent legal notice on 16.09.2019 to PD (RD), GNCTD for implementation of Industrial Tribunal Awards in ID No. 39/2006, 63/2003 and 45/2001 and the subsequent Hon'ble High Court of Delhi's Order dated 28.03.2019.
 - v. Following the non-implementation of the above Industrial Tribunal Awards, the petitioners filed Applications under Section 33C(1) of the Industrial Disputes Act, 1947 before the Deputy Labour Commissioner's office for recovery of amounts arising out of non-payment of salaries (in light of the Industrial Tribunal Awards) in respect of the various workmen from the management i.e. office of PD (RD), GNCTD.



vi. The petitioners subsequently made representations to SDM (Kotwali) on 18.03.2020 and 06.05.2020 (and on 05.06.2020 to the DM) wherein they requested SDM (Kotwali) to conclude the recovery proceedings in favour of the respective workmen by attaching the bank account/assets of the management i.e. office of PD (RD), GNCTD.

vii. Due to the failure of SDM (Kotwali) to effect the recovery proceedings, the petitioners served a notice of contempt on SDM (Kotwali) by way of emails dated 22.06.2020 and 06.07.2020 to SDM (Kotwali) and DC (Central). In the instant W.P. (C) filed in the Hon'ble High Court of Delhi, the petitioners have stated that SDM (Kotwali)/Respondent No. 1 failed to give any reply to these notices.

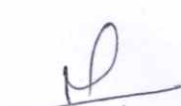
viii. Consequently, the petitioners have filed the instant petitions stating that they are in the process of initiating contempt proceedings against SDM (Kotwali)/Respondent No. 1 without prejudice to the petitioner's right to file the instant petition. The petitioners have prayed for the following reliefs:

- a. Issue an appropriate writ, order or direction to Respondent No. 1 (SDM, Kotwali) to recover in terms of recovery certificates arising from the Industrial Tribunal Awards in the three Industrial Disputes.
- b. Issue an appropriate writ order or direction to Respondent No. 2 (office of PD (RD), GNCTD) to implement the Industrial Tribunal Awards in the three Industrial Disputes.
- c. Direct the Respondents to pay interest for the delayed payment at the rate of 9% p.a. from the date the said amount became due till the date of payment.
- d. Impose exemplary costs on the Respondents for delaying Recovery Proceedings;
- e. Pass any other or further order as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case in favour of the Petitioner.

3. As regards the matter of regularization of the contractual MPCC caretakers/workmen in the Districts concerned, the Revenue Department (HQ) is in receipt of proposals from North & North West Districts for creation of posts of caretakers in these District offices, wherein these Districts have stated that the same issue is also pending in other Districts (South West, South and West), and that there is no post of caretaker in the District offices because of which the Industrial Tribunal Award regarding regularization of the contractual MPCC caretakers/workmen in the Districts concerned cannot be complied with.

4. As per decisions taken in the meeting chaired by Secy.-cum-Commissioner (Dev.) on 16.06.2020, and attended by representatives of Districts, the proposals for creation of Supernumerary Posts, against which the list of 32 contractual MPCC caretakers (as provided to this office vide minutes of the said meeting) are to be notionally appointed in the pay scale of Rs. 650-1200, are to be forwarded to the AR Department, after which concurrence of FD would be obtained on the financial implications, as may be worked out by the Accounts functionaries of Districts concerned.

5. Accordingly, the Revenue Department (HQ), vide its letters dated 03.06.2020 (and subsequent reminder dated 01.09.2020), requested all the Districts concerned to provide details of the contractual MPCC caretakers/workmen in the respective



Districts who are to be considered for regularisation in compliance of the Hon'ble Tribunal/Court Awards/Orders, so that the proposals of the Districts concerned for creation of posts of caretakers could be considered in a consolidated manner. Once the details of the contractual caretakers, who are to be regularised, are received from the remaining Districts concerned (besides the North & North West Districts), a consolidated proposal for creation of supernumerary posts of caretakers would be submitted by the Revenue Department (HQ) to the AR Department.

6. As regards the recovery proceedings before the Executive Magistrate, Kotwali, Dy. Director (RD) has informed that stock taking meetings have been held on 05.03.2020 and on 16.06.2020 in the Development Department. Based on the deliberations in the meeting held on 16.06.2020, the DMs concerned had been requested by the Revenue Department (HQ) vide its letters dated 07.07.2020 and subsequent reminder on 10.08.2020, to appoint Pairvi Officers in their Districts to attend hearings in the court of Executive Magistrate (Kotwali) to update the progress in implementation of the above Industrial Awards in respect of workmen/caretakers pertaining to their Districts.

7. However, as informed by Dy. Director (RD), on the last hearing held on 11.08.2020, the Pairvi Officers from District North West, South West and South attended the court of Executive Magistrate, Kotwali and denied any liability on the part of the Districts concerned for implementation of the awards of the Industrial Tribunal. In this connection, the opinion of Sh. Aashish Gumber, Legal Consultant (Revenue Department HQ), as provided to the Central District office on file in the above matter, is attached herewith as Annexure A, wherein the Legal Consultant has opined that, though the Rural Development Department, GNCTD has raised an objection that the actual recovery in the above matter pertains to DM (West), DM (South-West) and DM (North), the assets (including bank account) of only the Rural Development Department, GNCTD may be attached for recovery of the amount.

8. Accordingly, Dy. Director (RD) has stated that, since the situation has assumed significance due to filing of contempt petitions in Hon'ble High Court of Delhi for non-implementation of the orders of Industrial Tribunal, and Order dated 28.03.2019 of Hon'ble High Court of Delhi, a meeting with the District Magistrates concerned and officials of the Development Department may be convened at the level of Pr. Secretary (Revenue)/Divisional Commissioner at the earliest to avoid any adverse orders from the Hon'ble High Court of Delhi.

9. The three fresh petitions [W.P. (C) No. 5468/2020, 5436/2020 and 5493/2020] are **listed for hearing on 14.09.2020.**



Annexure A

The issue involved in the present matter is attachment of account of Rural Development, Govt. of NCT of Delhi. The brief facts necessary before giving legal opinion on the issue are that in order for the development of the rural parts of NCT of Delhi, a proposal for the construction of multipurpose community centres in different rural areas of Delhi was formulated and consequently persons/workmen were hired from the Rajya Sainik Board and were appointed as caretakers on contractual basis. The workers raised an industrial dispute on 07.12.1999 seeking regularization of their services and sought grant of pay in the regular pay scale. The Hon'ble Court of Sh. I.S. Mehta, presiding officer of Industrial Tribunal, Karkardooma Courts passed the Award in favour of workers and directed the department to regularize the services of the workmen. Against the award management challenged the same before the Hon'ble Delhi High Court but vide order dated 28.03.2019 petitions were dismissed and uphold the decision of the Industrial Tribunal.

The Department further challenged the order of Hon'ble Delhi High Court before Hon'ble Supreme Court of India which was also dismissed by the Hon'ble Supreme Court vide order dated 14.10.2019.

Thereafter recovery certificates were issued by the Labour office regarding implementation of the awards.

According to section 33C (1) of Industrial Disputes Act, 1947, Collector shall proceed to recover the amount so due in the same manner as an arrear of Land Revenue. The Hon'ble Delhi High Court vide its order dated 27.03.2017 in Santosh Kumar Jha Vs The Deputy Labour Commissioner (South) held in para 1.9 of the Judgment that "the SDM shall follow this procedure in respect of the proceedings under Industrial Disputes Act, Employee's Compensation Act, Motor Vehicle Act as well as other statutes which provides for the recovery as arrears of land revenue".

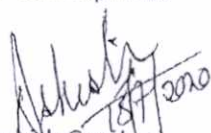
The procedure was laid down in the aforesaid order of Hon'ble Delhi High Court and it is also observed by the Hon'ble High Court in para 1.4 that SDM shall proceed to attach the assets of the respondents in accordance with law.

On perusal of the file it is ascertained that notices were sent to Rural Development Department by the Central District in order to make payment after the department exhausted all its right to appeal as mentioned above Hon'ble Supreme Court dismissed the department appeal and now the award has become final.

Considering the aforesaid facts and circumstances of the case and in the light of the decisions of Hon'ble Delhi High Court and Hon'ble Supreme Court of India, I am of the opinion that assets of the department shall be attached in order to execute the award including the bank account of the department and execution must be in accordance with law and also in terms of the format as annexed with the judgment of Hon'ble Delhi High Court passed in Santosh Kumar Jha VS Deputy Commissioner (South).

It is pertinent to mention that the department has raised the objection (as noted in the noting sheet 5/N at para f) that the actual recovery pertains to DM (West), DM (South-West) and DM (North).

Thus in the opinion of undersigned assets (including bank account) shall be attached for the recovery of amount but it should be through by following due process of law and the Districts have their jurisdictions may only proceed for the attachment of the assets of the Rural Development Department, Govt. of NCT of Delhi.


(Aashish Gumber)
Legal Consultant (HQ)