

STANDING COMMITTEE ON LABOUR

(2018-19)

(SIXTEENTH LOK SABHA)

MINISTRY OF HOME AFFAIRS

[Action taken by the Government on the Observations/Recommendations of the Committee contained in their Thirteenth Report (Sixteenth Lok Sabha) on 'Deployment of Contract/Casual/Sanitation Workers for Perennial Nature of Jobs in NDMC' pertaining to the Ministry of Home Affairs]

FORTY-NINTH REPORT

**LOK SABHA SECRETARIAT**

NEW DELHI

February, 2019/ Magha, 1940 (Saka)

FORTY-NINTH REPORT

STANDING COMMITTEE ON LABOUR

(2018-19)

(SIXTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

**[Action taken by the Government on the Observations/
Recommendations of the Committee contained in their Thirteenth
Report (Sixteenth Lok Sabha) on 'Deployment of Contract/
Casual/Sanitation Workers for Perennial Nature of Jobs in NDMC'
pertaining to the Ministry of Home Affairs]**

Presented to Lok Sabha on 07.02.2019

Laid in Rajya Sabha on 07.02.2019



LOK SABHA SECRETARIAT

NEW DELHI

February, 2019/ Magha, 1940 (Saka)

CONTENTS

	PAGE No.
<i>COMPOSITION OF THE COMMITTEE</i>	<i>(iv)</i>
<i>INTRODUCTION</i>	<i>(v)</i>
CHAPTER I	Report.....
CHAPTER II	Observations/Recommendations which have been accepted by the Government.....
CHAPTER III	Observations/Recommendations which the Committee do not desire to pursue in view of the Government's reply.....
CHAPTER IV	Observations/Recommendations in respect of which replies of Government have not been accepted by the Committee and which require reiteration.....
CHAPTER V	Observations/Recommendations in respect of which replies of the Government are interim in nature

APPENDICES

- I. Minutes of the sitting of the Committee held on 06.02.2019.
- II. Analysis of the Action Taken by Government on the Observations/ Recommendations contained in the Thirteenth Report (Sixteenth Lok Sabha)

COMPOSITION OF THE STANDING COMMITTEE ON LABOUR

(2018-19)

DR. KIRIT SOMAIYA - CHAIRPERSON

MEMBERS

Lok Sabha

2. Shri Udayanraje Pratapsingh Bhonsle
3. Shri Rajesh Kumar Diwakar
4. Shri Ashok Kumar Dohrey
5. Shri Satish Chandra Dubey
6. Shri Devajibhai Govindbhai Fatepara
7. Shri Satish Kumar Gautam
8. Dr. Boora Narsaiah Goud
9. Shri Rama Chandra Hansdah
10. Shri C. N. Jayadevan
11. Shri Bahadur Singh Koli
12. Dr. Arun Kumar
13. Shri Kaushalendra Kumar
14. Shri Hari Manjhi
15. Shri R. Parthipan
16. Shri Dayakar Pasunoori
17. Shri Hariom Singh Rathore
18. Shri Naba Kumar Sarania (Hira)
19. Shri Kodikunnil Suresh
20. Shri Mulayam Singh Yadav
21. Vacant

Rajya Sabha

22. Dr. Banda Prakash
23. Shri Ram Narain Dudi
24. Shri N. Gokulakrishnan
25. Shri Nazir Ahmed Laway
26. Shri P.L. Punia
27. Shri Rajaram
28. Shri Amar Shankar Sable
29. Ms. Dola Sen
30. Shri Madanlal Saini
31. Shri Akhilesh Prasad Singh

SECRETARIAT

- | | | |
|----------------------------|---|---------------------|
| 1. Ms. Rhimjhim Prasad | - | Joint Secretary |
| 2. Shri P.C. Choulda | - | Director |
| 3. Shri C. Vanlalruata | - | Additional Director |
| 4. Shri Mohinder Paul Rana | - | Executive Assistant |

INTRODUCTION

I, the Chairperson, Standing Committee on Labour (2018-19) having been authorized by the Committee do present on their behalf this Forty- Ninth Report on Action taken by the Government on the Observations/ Recommendations of the Committee contained in their Thirteenth Report (Sixteenth Lok Sabha) on 'Deployment of Contract/Casual/Sanitation Workers for Perennial Nature of Jobs in NDMC' pertaining to the Ministry of Home Affairs.

2. The Thirteenth Report was presented to Lok Sabha and laid in Rajya Sabha on 22nd December, 2015. The Ministry of Home Affairs furnished their replies indicating Action Taken on the Observations/ Recommendations contained in the Thirteenth Report on 9th January, 2019. The Committee considered and adopted the Draft Report at their sitting held on 6th February, 2019.

3. An analysis of the action taken by the Government on the Observations/Recommendations contained in the Thirteenth Report of the Standing Committee on Labour (Sixteenth Lok Sabha) is given at Appendix-II.

4. For ease of reference, Observations/ Recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
6th February, 2019
17th Magha, 1940 (Saka)

DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

REPORT

CHAPTER-I

This Report deals with action taken by the Government on the Observations/Recommendations of the Committee contained in their Thirteenth Report (Sixteenth Lok Sabha) on 'Deployment of contract/casual/sanitation workers for perennial nature of jobs in the NDMC' pertaining to the Ministry of Home Affairs.

2 The Thirteenth Report was presented to Lok Sabha and also laid in Rajya Sabha on 22nd December, 2015. It contained 13 Observations/Recommendations. Replies of the Government in respect of all these Recommendations have been received and are categorized as under:-

- | | | |
|-------|--|--|
| (i) | Observations/Recommendations which have been accepted by the Government –
Rec. Nos. 1, 2, 3, 4, 7, 9, 10, 11 and 12 | Total: 09
Percentage: 69.24 % |
| (ii) | Observations/Recommendations which the Committee do not desire to pursue in view of the Government's reply – Nil | Total:00
Percentage:00 |
| (iii) | Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration – Rec. Nos.5 and 6 | Total: 02
Percentage:15.38% |
| (iv) | Observations/Recommendations in respect of which replies of the Government are interim in nature- Rec. Nos. 8 and 13 | Total: 02
Percentage:15.38% |

3. The Committee desire that Action Taken Notes in respect of Observations/Recommendations contained in Chapter I and final action taken reply in respect of the Recommendation contained in Chapter V of this Report, for which interim reply has been given by the Government, may be furnished to them at the earliest.

(Recommendation Para No. 5)

4. In their original recommendation, the Committee had observed as under:

"The Committee note that the coverage of muster roll workers under the EPF in the NDMC started from May, 2015 and EPF has been deducted from all the eligible workers from the wages/salary of June, 2015 with matching contribution by the Council. In this context, the Committee find that as the NDMC came under the EPF Act w.e.f. January, 2011, summons have been issued by the EPFO to the NDMC for appearance along with the relevant records to calculate the EPF deposit with retrospective effect, i.e. January, 2011. The Committee take a serious view of the statement made by the representatives of EPFO that they are not getting the required cooperation from the NDMC to sort out the matter. The Committee desire the Council to extend full cooperation to the EPFO, initiate prompt action and produce all the relevant records before the PF Authorities so that the workers who are entitled to be covered under the EPF retrospectively are brought under its ambit starting January, 2011 and their subscription from January, 2011 till May 2015 be calculated and deposited in their respective accounts, along with the penalty, if any, imposed by the EPFO."

5. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"The Clause 2 of the Employees' Provident Fund Scheme, 1952 made under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) details the categories of employees covered under the scheme. The Clause 2(f) further provides that an employee having pay more than Rs. 6,500/- per month were not covered under the EPF scheme. However, the Ministry of Labour and Employment, Government of India vide Employees' Provident Funds (Amendment) Scheme, 2014 [notification No. G.S.R. 608 (E) dated 22.08.2014] revised the limits to Rs. 15,000/- w.e.f. 01.09.2014.

The minimum wages as notified by Government of NCT of Delhi in case of un-skilled workers w.e.f. 1.10.2011 were Rs. 6656/-, which were revised to Rs. 8632 from 01.10.2014. The NDMC is making payments to Contractors as per minimum wages notified by Government of NCT of Delhi from time to time and similar provisions for disbursement of wages to Labours is made in the work agreements signed with the Contractors. As such, the Labourers engaged by Contractor's, assigned work by NDMC fell in the category of excluded employee during the period 01.10.2011 to 31.08.2014.

NDMC is regularly remitting EPF contributions (both employer and employee) in respect of its eligible employees from 1.4.2015 to EPFO. During the period, NDMC has remitted an amount of Rs. 21.65 Crores to EPFO. The NDMC has deposited the principal balance amount of Rs. 1,74,88,766 for the period 01.09.2014 to 31.03.2015 with EPFO. NDMC has been making monthly deduction of EPF and depositing the amount with EPFO. To indicate the deductions made, the details for last three months are indicated below:

S. No.	Total number of employees in respect of whom EPF is being deducted	Period	Employee contribution (in Rs.)	Employer contribution (in Rs.)	Total EPF contribution (in Rs.)
1.	4460	January-2018	75,65,632	82,86,270	1,58,51,902
2.	4457	February-2018	65,97,924	73,43,151	1,39,41,075
3.	4454	March-2018	73,82,865	81,15,765	1,54,98,630

Compliance of the provisions of EPF Act is also being checked and verified in respect of labour engaged by the NDMC Contractors by Executive Engineers/Assistant Engineers/Junior Engineers concerned.

NDMC is extending full co-operation to EPFO for the enquiry initiated by them under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952."

6. On being apprised by the EPFO that they were not getting the requisite cooperation from NDMC towards the matter of calculation and submission of the EPF deposit by NDMC with retrospective effect i.e. January, 2011, the time since NDMC came under the ambit of EPFO Act. In their reply NDMC have forwarded a submission that labourers engaged by contractor's assigned work by NDMC fell in the category of excluded employee during the period of 01.10.2011 to 31.08.2014. It has further been submitted that NDMC is checking compliance of provisions of EPF Act in respect of labour engaged by NDMC contractors by the concerned engineer. Lastly, NDMC is extending full cooperation to EPFO for the enquiry initiated by them under Section 7-A of the Act. The Committee, therefore, reiterate their earlier recommendation that NDMC extend full cooperation to the EPFO, so that a speedy resolution is achieved on the

issue of coverage of NDMC under EPFC Act w.e.f. January, 2011, so that the workers who are entitled to be covered under EPF retrospectively are brought under its ambit starting January, 2011 and their subscription from January, 2011 till May 2015 be calculated and deposited in their respective accounts, along with the penalty, if any, imposed by the EPFO.

(Recommendation Para No. 6)

7. In their original recommendation, the Committee had observed as under:

"The Committee note that the contract workers receive minimum wages as prescribed by the Government of NCT of Delhi which remain static for the whole duration of the contract. The Committee are given to understand that while entering into contractual agreements, there is generally an automatic variable provision for the prices of cement, steel and other raw materials, whereas no such variable provision is prescribed for the revision of wages. As per law, the minimum wages are to be revised after every six months, but in the absence of any variable provisions for upward revision of wages in the contract agreement itself, the workers are bound to work on the fixed wages during the entire tender period and thus subject to exploitation by the contractors. The Committee are of the considered opinion that the basic concept in any tender document is to take care of the variables during the contract period and revision of wages is one such most important variable which ought to be taken into consideration in order to take a better case of the interests of labour. The Committee feel that the NDMC, having the functional autonomy, should find no difficulty in doing the needful in the matter. They, therefore, exhort the NDMC that henceforth tender documents should clearly stipulate that along with other variables, revision of minimum wages also has to be appropriately taken care of till the contract remains in vogue."

8. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"Clause 10C of the General Condition of Contract in the contract agreements provides for payment to be made on account of increase/decrease in prices/ wages due to statutory orders. Compliance of Clause 10C by the contractors as per minimum wages is being ensured by Divisional Officers/Executive Engineers as verified by field executives i.e. Junior Engineer/Assistant Engineer.

9. Being of the considered opinion that the basic concept in any tender document is to take care of the variables during the contract

period and revision of wages is one such most important variable which ought to be taken into consideration. Accordingly, they had exhorted upon the NDMC that henceforth tender documents should clearly stipulate that alongwith other variables, revision of minimum wages also has to be appropriately take care of till the contract remains in vogue. Rather than initiating any action upon the Committee's recommendation, the NDMC in their action taken reply have merely referred to clause 10C of the general condition of contract in contract agreements which provides for payment to be made on account of increase/decrease in prices/wages due to statutory orders. The Committee, therefore, reiterate their earlier recommendation and impress upno NDMC to ensure compliance of the same.

CHAPTER-II
OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE
GOVERNMENT
(Recommendation No. 1)

In the process of examination of the subject "Deployment of Contract/Casual/Sanitation Workers for perennial nature of jobs in NDMC", which was taken up by the Committee in the year 2014, a List of Points was sent to NDMC for obtaining written replies thereto. A perusal of the replies received from NDMC for the first time, and that too after much persuasion, revealed that they were not only grossly deficient and incomplete in many respects but the pertinent queries made by the Committee were also responded to in a casual manner. The written replies obtained for the second time were also found to be a mere repetition of what was replied to earlier by the NDMC. Due to this, two sittings of the Committee slated for taking evidence of the representatives of the MHA/NDMC had to be adjourned. The Committee, while taking a serious view of the demeanor of the NDMC, bordering on a taken-for-granted attitude and its casual approach in dealing with matters concerning Parliament and its Committee, would at the outset, strongly condemn the conduct of the NDMC therefore and accordingly expect the Ministry to prevail upon the Council to exercise due diligence and display utmost seriousness while dealing with Parliamentary matters in future.

Reply of the Government

The concerns of the Standing Committee have been noted for strict compliance in future. An advisory to all Head of Departments (HODs) has been issued to exercise due diligence and display utmost seriousness while dealing with parliamentary matters. In this regard, provisions of Chapter 12 'Committees of Parliament' of Manual of Parliamentary Procedures in the Government of India have been circulated to all concerned for strict compliance.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 2)

The Committee note that in the course of discharging its obligatory and discretionary functions and responsibilities, NDMC is permitted to deploy contract labour under the provisions of 'The Contract Labour (Regulation and

Abolition) Act, 1970'. According to the NDMC, such contract labours are partially appointed in cleaning, sweeping, security and other related works and also in some other few categories like Junior Engineer, Data Entry Operator, Clerical Assistants, Teachers, etc., on the ground of administrative exigencies. The Committee are not inclined to accept the reasoning adduced by the Council for the deployment of contract labour in the aforesaid categories of posts as all the above listed works performed by the outsourced workers apparently seem to be perennial in nature and belong to core functions of the Council. While expressing reservations over the deployment of contract labour for jobs of a perennial nature, the Committee desire the NDMC to desist from this practice act and in case any such outsourcing is genuinely found to be unavoidable and exigent, the contract labour so appointed should be permanently absorbed in the Council, once they have rendered the required length of service.

Reply of the Government

Section 11 & Section 12 of the New Delhi Municipal Council (NDMC) Act, 1994 provides for obligatory and discretionary functions of the Council respectively. NDMC being a municipal body, takes care of the area where important offices/buildings like Parliament of India, President House, Prime Minister House, Bungalows of Union Ministers and members of Parliament, Embassies of various countries, Supreme Court, High Court of Delhi and other important Government offices are situated. This requires immediate and paramount attention on various occasions, like Government functions, International Summits, visit of foreign dignitaries and other events of national importance. On many occasions such activities, which cannot be planned in advance by the NDMC, arises on day-to-day basis and requires extra efforts, including manpower, to carry out operations/ functions in a time-bound manner.

NDMC in order to carry out its obligatory and discretionary functions and responsibilities has sanctioned strength of different categories of employees. Besides this temporary/contract labour is engaged by NDMC on project to project basis i.e. on work charge.

In terms of provision of Section 42 of NDMC Act 1994, Delhi Subordinate Service Selection Board (DSSSB) has been designated as recruitment agency for Category 'B' and Category 'C' posts. Due to delay in nomination of candidates against requisition placed with DSSSB, to continue uninterrupted municipal services to residents of its territorial jurisdiction as well as floating population visiting NDMC area for business, tourism, recreational or other purposes, NDMC has hired service of various employees on contract basis. In

future, NDMC will make every efforts to impress upon DSSSB for timely selection against requisition placed for different categories of employees, so that need for employing persons on contract basis can be completely obviated.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 3)

The Committee are deeply concerned to observe that until the subject was taken up for examination by them, the NDMC was either ignorant or deliberately ignoring compliance of the Labour Laws prevalent in the Country as a result of which, the contractors appointed by the NDMC neither followed nor were inclined to follow the prescribed procedures and provisions of the Labour Laws. As per the report submitted by the Labour authorities under the Ministry of Labour and Employment, most of the contractors were working without obtaining valid labour licenses and were also not extending the EPF and ESI facilities to the contract labour. The Committee, however, draw some solace from the fact that after the Committee's deliberations with MHA/NDMC, held on 27th May 2015, the Council had issued directions to all contractors for obtaining necessary labour licenses and EPF and ESI codes, wherever applicable. As per the instructions of the Committee, a list of contractors has also been provided to the Labour, EPF and ESI Departments and subsequently special camps have also been organized by the three Organisations for the registration/awareness of the contract workers. The Committee, while taking note of the efforts made by the NDMC, albeit late, desire that a definite timeline be given to all the contractors for completing the formalities leading to compliance with EPF and ESI coverage of the workers deployed by them. The Committee also impress upon the NDMC to insert suitable clauses in future contractual agreements so as to make sure that the contractors honour the prescribed provisions towards wages, gratuity and social security for the contract workers.

Reply of the Government

The issue of applicability of ESI Act to Employees of NDMC was taken up with DG, ESIC. In reply the ESIC has informed that as per notification of Ministry of Labour and Employment dated 20.07.2009, the provisions of ESI Act, 1948 were extended to certain classes of establishments belonging to or under the control of the Central Government as specified in the Schedule. However, as per the aforesaid notification Municipal Corporations/Bodies were not included

in the list of establishment to which ESI Act applies. Vide their letter dated 24.06.2016, the ESIC has further informed that necessary action for issue of notification under Section 1(5) of the ESI Act to cover casual/contractual employees in municipal bodies is under process so that these workers may get the benefits provided under the ESI Act. The ESI has now initiated a survey for the notification. The NDMC would take further necessary action as per directions of ESIC.

As regards EPF and ESI contribution of worker engaged by the Contractors allotted projects/work by NDMC, it is informed that to ensure compliance with statutory provisions, the payments of contractors are being released, after verification by the field executives (like Junior Engineer, Assistant Engineer, etc.) about statutory remittance of EPF and ESI contributions by contractors in the labours accounts with the concerned authorities.

The following clauses regarding compliance with EPF and ESI coverage of the workers deployed by the contractors has been incorporated in the General Conditions of the Contracts, which form the part of the Contractual Agreement w.e.f. 30th June, 2015:

"Clause 7A

No Running Account Bill shall be paid for the work till the applicable labour licenses, registration with EPFO, ESIC and BOCW Welfare Board, whatever applicable are submitted by the contractor to the Engineer-in-Charge.

Clause 19L

The ESI and EPF contributions on the part of employer in respect of this contract shall be paid by the contractor. These contributions on the part of the employer paid by the contractor shall be reimbursed by the Engineer-in-Charge to the contractor on actual basis.

The applicable and eligible amount of EPF and ESI shall be reimbursed preferably within 7 days but not later than 30 days of submission of documentary proof of payment provided same are in order."

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 4)

As per information submitted to the Committee, there are 428 contractors enlisted with the NDMC. However, when the Committee desired the details of all the 428 contractors, i.e. their addresses, EPF & ESI code numbers, number of workers engaged by them, wages given, etc. to be provided to EPF/ESI/CLC Authorities for verification, the NDMC furnished the details of 126 contractors only. On cross checking by the abovesaid authorities, it was found that out of the 126 contractors, only 60 contractors have complied with the EPF requirement and 58 with the ESI provisions as yet. The Committee deplore this state of affairs and desire that details of the rest of the contractors be provided forthwith to the Authorities for verification and a time-bound ultimatum be issued to all the contractors engaged by the NDMC to unfailingly extend all the social security benefits, as prescribed under the relevant labour laws, to the workers deployed by them.

Reply of the Government

Details of 428 contractors, provided to the Standing Committee, have been re-verified by NDMC. It was observed that some contractors had more than one contract. Hence, the number of contractors has been reduced to 126 and accordingly, the Standing Committee was informed during the evidence on 15.07.2015 that the details of these 126 contractors were provided vide letters no. SO(E)/621, 622 and 623 SA-III dtd 7.7.2015 to the Regional Director, Employees State Insurance Corporation, to Regional Provident Fund Commissioner (North-1), Employee Provident Fund Organisation and to the Deputy Chief Labour Commissioner (Central), Ministry of Labour.

Subsequent to submission of reply, a consolidated list of contractor engaged by various Department has been made available on NDMC website under Personnel Department. The revised consolidated list of contracts have been again forwarded to Regional Director, Employees State Insurance Corporation, to Regional Provident Fund Commissioner (North-1), Employee Provident Fund Organisation and to the Deputy Chief Labour Commissioner (Central), Ministry of Labour.

As informed under the reply to observations at Para 3, the payments of all contractors are being released only after verification by the field executives (like Junior Engineer, Assistant Engineer, etc.) about statutory remittance of EPF and ESI contributions by contractors in the labours accounts with the concerned authorities.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 7)

According to the NDMC, disbursement of wages by the contractors is being made in the presence of Assistant Engineer/Junior Engineer and the Divisional Heads conduct periodic inspections to ensure payment of wages to the contract workers as per rules. The Committee feel that these are steps in the right direction and ought to be continued so as to deter under-payment to, and exploitation of, the contract labour. The Committee also recommend that when the contract workers are made to perform same/similar kind of works, as being performed by the regular employees, the principle of equal pay for equal work should invariably be invoked.

Reply of the Government

It is being ensured that the Contractors pay its workers the minimum wages notified by the Government of NCT of Delhi from time to time. Suitable clause has been incorporated in the General Condition of Contract – Contractor's Labour Regulation that the Contractors shall make the payment of wages due to every worker through bank account of labour or ECS or online transfer to his bank account and the compliance thereof is being ensured.

The Government of NCT of Delhi vide its Office Memorandum No. F.20/40/2016-AC/DSFA/16-45 dated 20.01.2017 has approved the consolidated remuneration payable to the persons on contract basis against vacant posts with approval of the competent authority shall be calculated on the basis of minimum of pay or the first level of the pay matrix applicable to the respective post + D.A, so as to ensure that the remuneration payable to the persons engaged on contract basis is on uniform basis.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 9)

The Committee note that in order to become eligible for gratuity, a minimum of five years of service is to be rendered by an employee; further, as clarified by the Regional Labour Commissioner in evidence it is not necessary that he/she should have worked under a single employer. The problem in the NDMC is that the tenders floated by it are of shorter durations, viz. two years, after which, if the contractor changes, the next contractor either deploys his own people or refuses to acknowledge the services rendered by the workers deployed by the previous contractor. In such a scenario, the sufferers are the hapless

contract workers. Taking into consideration the fact that if any agency employs above 10 persons, it has the obligation to get the workers enrolled under ESI, the Committee are of the firm opinion that it is as much the responsibility of the NDMC as that of the contractor to adhere to the provisions enshrined in the ESI Act and cover all the workers under the ESI. The Committee, therefore, want the NDMC to ensure that whenever a contract is awarded, the contractors are enrolled under the ESI. Besides, with a view to avoiding litigations, the NDMC should deduct the gratuity amount from the previous contractor's final bill and put it in a dedicated fund or hand it over to the next contractor for the purpose. Since the NDMC executes jobs of continuous or regular nature, the Committee further desire the Council to ensure that the contract workers continue, the change of contractors notwithstanding.

Reply of the Government

As stated in reply to para 3 above, the payments of contractors are being released, after verification by the field executives (like Junior Engineer, Assistant Engineer, etc.) about statutory remittance of ESI contributions by contractors in the labours accounts with the concerned authorities.

The clauses regarding compliance with ESI coverage of the workers deployed by the contractors has been incorporated in the General Conditions of the Contracts, which form the part of all Contractual Agreement w.e.f. 30.09.2015.

The NDMC stand that it does not have authority for deduction of gratuity amount in respect of a worker hired by a contractor is reiterated. Under Section – 4 of Payment of Gratuity Act, an employee is entitled for gratuity only on completion of 5 years of service. There is no provision under the said Act for deduction of advance gratuity in respect of employee hired by contractors. For future, in terms & conditions of contract that may be awarded by NDMC, an undertaking to the effect that all deductions under Payment of Gratuity Act, EPF Act, ESIC Act etc. in respect of employee hired by the firm/contractor of award, on contract, are being made, will be incorporated, appropriate action for failing to comply with the said undertaking, in case any violation is found, will be taken by concerned HoD.

Regarding continuance of contract workers on change of contractors, it is informed that contractors hire workers on work requirement basis as per their skill set. Some contractors have their own workers team. It would not be feasible for the NDMC to ask contractor for continuation of previous workers,

as it would lead to conflict of interest due to non-performance by the contractor on the ground of undesired output from such previous workers.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 10)

The Committee are deeply concerned to note the submission of some RMR workers that they have never been issued any wage slips since the time of their engagement in the NDMC nor any EPF statement/ Account Number has been issued to them. Worse still, they have not been given any bonus during the current year. Though the NDMC repeatedly claimed that all the workers are regularly being issued wage slips, the Committee feel that there are some loopholes which need to be identified and plugged as such. Therefore, the NDMC should urgently initiate corrective measures and ensure that all the workers are invariably issued the wage slips every month in addition to the PF statement and Account Number, failing which stern action be taken against the delinquent supervisory staff. The Committee further desire that the NDMC should earnestly consider giving bonus to all its eligible employees during the current year.

Reply of the Government

The wages slip of all the Muster Roll employees is being generated in routine manner. A printout of salary slip and EPF statement in respect of Shri Sunil Kumar, a RMR employee is attached for perusal of the Committee. It is also mentioned here that a system generated SMS indicating generation of salary bill is sent to all Muster Roll employees every month. For transparency, NDMC is making payment of wages to muster roll employees through ECS/NEFT only. After allotment of Universal Account Number (UAN) by EPFO, these workers would be able to view details of their EPF balances and avail online facility being extended by EPFO.

Bonus is being allowed to all eligible muster roll workers of NDMC, as per Government of India, Department of Expenditure O.M. No. 7/24/2007/E.III(A) dated 03.10.2016. Orders for payment of bonus to the eligible muster roll workers were issued. During the financial year 2015-16 bonus have been paid to 2225 Muster Roll Workers and 917 Contractual Employees who fulfilled the eligibility criteria. No other employee fulfilled the eligibility criteria and as such has not been paid bonus.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 11)

Though the NDMC have claimed that checks/super checks or surprise checks are regularly made by the HOD concerned, by the respective Branch In-charge as also by the Vigilance Department, the discrepancies/anomalies in the coverage of workers under ESI, EPF, Gratuity, issue of wage slips and EPF statements and overall implementation of labour laws, as pointed out in the preceding paragraphs, reinforce the Committee's apprehensions over the inadequate monitoring mechanism in the NDMC. Further, a scrutiny of the wage register/muster roll revealed that the register had been signed by the JE/AE concerned without date, stamp and the certificate contrary to as has been prescribed under the Contract Labour Act, 1970. The Committee, therefore, impress upon the NDMC to strengthen the extant monitoring system and intensify checks/inspections so as to ensure that the contract and muster roll workers get their legitimate rights and that the labour laws are honoured in letter and spirit. The Committee further desire that the supervisory staff must invariably certify on each page of the wage register/muster roll as prescribed in the Contract Labour Act, besides putting signature with the date and stamp.

Reply of the Government

Strict instructions have been issued to all Divisional Officers/Supervisory Staff that they must invariably certify on each page of the Wage Register/Muster Roll, besides putting their signatures with the date and stamp. The compliance in this regard is being ensured by the concerned Accounting Units before releasing payments to the contractors. Instructions have been issued to all Head of Department in NDMC in this regards.

Also a indicative copy of Muster Roll in respect of Temporary Muster Roll and Regular Muster Roll Employees in respect of BM-II Division under Civil Department indicating that necessary instructions in this regards are being followed.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 12)

The Committee were informed that details showing name, address and license number of the contractors along with payment details are uploaded on the NDMC website, i.e. www.ndmc.gov.in and such details are accessible to the

general public. However, the Committee find that as of now the NDMC have not displayed the details of the contractual works in progress, the list of contractors, working/construction sites, number of workers under each contractor, labour license number, ESI and EPF code of the contractors, etc. The Committee strongly recommend that all these details must be put on the NDMC website which could be accessible to any interested party/stakeholder. The Committee further desire that the details of the officials responsible for the updating of the site may also be notified at the end of the home page so as to fix responsibility and ensure regular updating of the website.

Reply of the Government

The list of contractors engaged by NDMC and as furnished by concerned HoDs is available on NDMC website with following weblink ([www.ndmc.gov.in / Department/ Personnel Department/Details of Contractors List](http://www.ndmc.gov.in/Department/Personnel%20Department/Details%20of%20Contractors%20List)). Further in compliance with observation of Standing Committee, IT Department have been instructed to create hyperlink on NDMC's website where Department-wise details of contractor engaged by NDMC have uploaded and concerned HoD will be responsible for uploading the quarterly update in this regards.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

CHAPTER-III

OBSERVATIONS/ RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLY

NIL

CHAPTER-IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

(Recommendation No. 5)

The Committee note that the coverage of muster roll workers under the EPF in the NDMC started from May, 2015 and EPF has been deducted from all the eligible workers from the wages/salary of June, 2015 with matching contribution by the Council. In this context, the Committee find that as the NDMC came under the EPF Act w.e.f. January, 2011, summons have been issued by the EPFO to the NDMC for appearance along with the relevant records to calculate the EPF deposit with retrospective effect, i.e. January, 2011. The Committee take a serious view of the statement made by the representatives of EPFO that they are not getting the required cooperation from the NDMC to sort out the matter. The Committee desire the Council to extend full cooperation to the EPFO, initiate prompt action and produce all the relevant records before the PF Authorities so that the workers who are entitled to be covered under the EPF retrospectively are brought under its ambit starting January, 2011 and their subscription from January, 2011 till May 2015 be calculated and deposited in their respective accounts, along with the penalty, if any, imposed by the EPFO.

Reply of the Government

The Clause 2 of the Employees' Provident Fund Scheme, 1952 made under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) details the categories of employees covered under the scheme. The Clause 2(f) further provides that an employee having pay more than Rs. 6,500/- per month were not covered under the EPF scheme. However, the Ministry of Labour and Employment, Government of India vide Employees' Provident Funds (Amendment) Scheme, 2014 [notification No. G.S.R. 608 (E) dated 22.08.2014] revised the limits to Rs. 15,000/- w.e.f. 01.09.2014.

The minimum wages as notified by Government of NCT of Delhi in case of unskilled workers w.e.f. 1.10.2011 were Rs. 6656/-, which were revised to Rs. 8632 from 01.10.2014. The NDMC is making payments to Contractors as per minimum wages notified by Government of NCT of Delhi from time to time and similar provisions for disbursement of wages to Labours is made in the work

agreements signed with the Contractors. As such, the Labourers engaged by Contractor's, assigned work by NDMC fell in the category of excluded employee during the period 01.10.2011 to 31.08.2014.

NDMC is regularly remitting EPF contributions (both employer and employee) in respect of its eligible employees from 1.4.2015 to EPFO. During the period, NDMC has remitted an amount of Rs. 21.65 Crores to EPFO. The NDMC has deposited the principal balance amount of Rs. 1,74,88,766 for the period 01.09.2014 to 31.03.2015 with EPFO. NDMC has been making monthly deduction of EPF and depositing the amount with EPFO. To indicate the deductions made, the details for last three months are indicated below:

S. No.	Total number of employees in respect of whom EPF is being deducted	Period	Employee contribution (in Rs.)	Employer contribution (in Rs.)	Total EPF contribution (in Rs.)
1.	4460	January-2018	75,65,632	82,86,270	1,58,51,902
2.	4457	February-2018	65,97,924	73,43,151	1,39,41,075
3.	4454	March-2018	73,82,865	81,15,765	1,54,98,630

Compliance of the provisions of EPF Act is also being checked and verified in respect of labour engaged by the NDMC Contractors by Executive Engineers/Assistant Engineers/Junior Engineers concerned.

NDMC is extending full co-operation to EPFO for the enquiry initiated by them under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 6)

The Committee note that the contract workers receive minimum wages as prescribed by the Government of NCT of Delhi which remain static for the whole duration of the contract. The Committee are given to understand that while entering into contractual agreements, there is generally an automatic variable provision for the prices of cement, steel and other raw materials, whereas no such variable provision is prescribed for the revision of wages. As

per law, the minimum wages are to be revised after every six months, but in the absence of any variable provisions for upward revision of wages in the contract agreement itself, the workers are bound to work on the fixed wages during the entire tender period and thus subject to exploitation by the contractors. The Committee are of the considered opinion that the basic concept in any tender document is to take care of the variables during the contract period and revision of wages is one such most important variable which ought to be taken into consideration in order to take a better case of the interests of labour. The Committee feel that the NDMC, having the functional autonomy, should find no difficulty in doing the needful in the matter. They, therefore, exhort the NDMC that henceforth tender documents should clearly stipulate that along with other variables, revision of minimum wages also has to be appropriately taken care of till the contract remains in vogue.

Reply of the Government

Clause 10C of the General Condition of Contract in the contract agreements provides for payment to be made on account of increase/decrease in prices/wages due to statutory orders. Compliance of Clause 10C by the contractors as per minimum wages is being ensured by Divisional Officers/Executive Engineers as verified by field executives i.e. Junior Engineer / Assistant Engineer.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

CHAPTER-V

OBSERVATION/RECOMMENDATION IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT ARE INTERIM IN NATURE

(Recommendation No. 8)

The Committee note that there are around 6000 muster roll workers who are directly employed by the NDMC for proper maintenance of roads, buildings, parks and gardens in the NDMC area. The Committee further note that during the last five years, 710 Regular Muster Roll (RMR) workers have been regularised. What concerns the Committee is the fact that the muster roll workers who complete a minimum of 500 days of service on a particular date are given the status of RMR workers and only after that they are considered for regularisation, whereas as per the extant rules, workers who complete a minimum of 240 days of service are considered for regularisation. According to the NDMC, the Council is not having adequate number of sanctioned posts because of which they are unable to regularise the workers after 240 days of service. In order to overcome the constraints in the matter, the NDMC is reportedly planning to conduct a study to gauge the actual requirement of additional manpower, besides imparting skill development training programme for six to twelve months to the muster roll workers. While taking note of the statement of intent by the NDMC, the Committee recommend to the Council to expeditiously come out with concrete action in terms of conducting the proposed study and imparting skill development training so as to ensure progressive regularisation of the large number of muster roll workers who have completed 240 days of service and the resultant removal of wage disparity between the muster roll workers and the regular staff.

Reply of the Government

NDMC as a progressive employer has taken around 6000 senior most muster roll workers on Regular Muster Roll, which would be required by it against anticipated works to be executed during the year, so that their muster roll may continue. It is a legally establishment principle that appointment to a post can be made only as per provision of notified regulations/recruitment rules for the post. A proposal for framing regulation for regularisation of service of RMR workers against regular category 'D' municipal post is under consideration in the Council and after approval by the Council, the same will be submitted to Ministry of Home Affairs for consideration/approval.

NDMC has initiated the process of imparting training to these RMR workers. 50 RMR workers in Electric Department had been sent for training to NSIC. 1400 Gardeners, Masons, Assistant Pavement Layers, Electricians, Safai Karamcharies, unarmed Security Guards have been trained to enhance their capabilities and skills.

To undertake study on manpower requirement in various Department of NDMC, five Institutes/organisation namely MDI, Gurgaon, IIPA New Delhi, NIFM New Delhi, ASCI Hyderabad and NPC New Delhi were addressed. Three Institutes namely, IIPA New Delhi, MDI Gurgaon and NPC New Delhi have shown keenness to undertake such a study. With approval of the Competent Authority in NDMC, Indian Institute of Public Administration has been awarded study to assess manpower requirement of various Departments in NDMC.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

(Recommendation No. 13)

The Committee are concerned to note that during the last five years, there were reportedly three cases of fatal accidents of contract labour. According to the NDMC, medical treatment and compensation to the accident victims and their family members are ensured through insertion of the General Conditions of Contract signed by the NDMC with the contractors and as per the provisions of the Workmen Compensation Act, 1923. But, a scrutiny of the documents furnished by NDMC revealed that only in one case compensation of Rs 50,000/- has been paid to the heir of the deceased labour despite an agreement to provide Rs.3,00,000/- as compensation; the matter is sub-judice at present. Even more disturbing is the fact that in the other two cases, though the accidents occurred in 2013 and 2015, not even a single rupee has been given to their heirs as compensation. Such instances negate the claims of the NDMC that compensations to the accident victims are ensured. The Committee, therefore, desire that the NDMC should make concrete efforts and ensure that the accident victims get timely treatment and compensations under the General Conditions of Contract; failing which stringent action be taken against the contractor concerned. The Committee further urge the NDMC to prevail upon the contractors to adhere to adequate and requisite safety measures so as to prevent fatal accidents and grave mishaps in future.

Reply of the Government

The following is the status of the remaining two cases of fatal accidents of contract labour:

Sl. No.	Name of the worker concerned	Present Status
1	Shri Mantu Bhardar	The claim filed by Smt. Babita w/o Late Shri Mantu Bhardar before the Commissioner, Employee's Compensation. NDMC has deposited Rs.8,92,790/- (Rs. Eight Lakh Ninety Two Thousand Seven Hundred and Ninety) with the Commissioner, Employee's Compensation, New Delhi on 12.10.2015.
2	Smt. Zeba Kausar	The claim filed by Shri Tabrez Alam husband of Smt. Zeba Kausar before the Commissioner, Employee's Compensation. The Commissioner, vide order dated 28.1.2016, directed Oriental Insurance Company Limited to pay Rs.7,88,240/- (Rs. Seven Lakh Eighty Eight Thousand, Two Hundred and Forty) to the claimant.

The condition regarding payment of compensation to the workers comes under the provisions of the Workmen's Compensation Act, 1923. Clause 18A of General Condition of Contract provides for recovery from the contractor by the NDMC, of compensation paid to the workmen by virtue of the provisions of sub-section(1) of Section 12, of the Workmen's Compensation Act 1923. This clause enables NDMC to make payments to the workers at the cost of the contractor.

Further, it has been decided by NDMC that all the Regular Muster Roll/Temporary Muster Roll Employees would be covered under the Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJMY) and the premium amount in this regard is being paid by NDMC. Under these schemes amount of Rs. 2.00 lakhs in case of death and upto Rs. 2.00 Lakhs in case of disability is allowed. 2256 RMR/TMR have been enrolled under PMSBY and 2325 have been enrolled under PMJJBY and efforts are being made to cover all the existing RMR/TMR employees.

(Ministry of Home Affairs File No. 16015/1/2015-Delhi-II Dated 21.08.2018)

New Delhi;
6th February, 2019
17th Magha, 1940 (Saka)

DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

STANDING COMMITTEE ON LABOUR

(2018-19)

Minutes of the Twelfth Sitting of the Committee

The Committee sat on Wednesday, the 6th February, 2019 from 1030 hrs. to 1100 hrs. in Room No. 95-A, Chairperson's Chamber, Parliament House, New Delhi.

PRESENT

Dr. Kirit Somaiya – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Ashok Kumar Dohrey, MP
3. Shri Satish Chandra Dubey, MP
4. Shri Rama Chandra Hansdah, MP
5. Shri C. N. Jayadevan, MP
6. Shri Kaushalendra Kumar, MP
7. Shri R. Parthipan, MP
8. Shri Hariom Singh Rathore, MP

RAJYA SABHA

9. Shri Ram Narain Dudi, MP
10. Shri P.L. Punia, MP
11. Shri Amar Shankar Sable, MP
12. Shri N. Gokulakrishnan, MP
13. Shri Madanlal Saini, MP

SECRETARIAT

- | | | | |
|----|----------------------|---|---------------------|
| 1. | Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. | Shri P.C. Choulda | - | Director |
| 3. | Shri C. Vanlalruata | - | Additional Director |
| 4. | Shri Kulvinder Singh | - | Under Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee, convened for consideration and adoption of the following draft Reports:

- | | | | | |
|-------|--|----|----|----|
| (i) | XX | XX | XX | XX |
| (ii) | XX | XX | XX | XX |
| (iii) | XX | XX | XX | XX |
| (iv) | Action Taken by the Government on the Observations/
Recommendations of the Committee contained in their 13 th Report
on 'Deployment of Contract/Casual/Sanitation Workers for
Perennial Nature of Jobs in NDMC' pertaining to the Ministry of
Home Affairs; | | | |
| (v) | XX | XX | XX | XX |
| (vi) | XX | XX | XX | XX |
| (vii) | XX | XX | XX | XX |

3. The Committee took up the Draft Reports one by one for consideration/ adoption and adopted the same without any addition/ modification.

4. The Committee then authorized the Chairperson to finalise the Report and present the same to both the Houses.

The Committee then adjourned.

XX Does not pertain to this Report.

APPENDIX-II**(Vide Para No. 3 of the Introduction)****ANALYSIS OF ACTION TAKEN BY THE GOVERNMENT ON
RECOMMENDATIONS CONTAINED IN THE THIRTEENTH REPORT OF THE
STANDING COMMITTEE ON LABOUR (SIXTEENTH LOK SABHA)**

	Total	Percentage
I. Total number of Recommendations	13	
II. Observations/Recommendations which have been accepted by Government (Recommendation Para. Nos. 1, 2, 3, 4, 7, 9, 10, 11 and 12)	09	69.24%
III. Observations/Recommendations which the Committee do not desire to pursue in view of Government's replies - Nil	00	00%
IV. Observations/Recommendations in respect of which Government's replies have not been accepted by the Committee and which requires reiteration – Recommendation Para Nos. 5 and 6	02	15.38%
V. Observations/Recommendations in respect of which replies of Government are of interim in nature- Recommendation Para Nos. 8 and 13	02	15.38%
		----- 100% -----