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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 05, 2008

Date of decision: 19th December, 2008

W.P.(C) No. 763 of 2008 & C.M. No.1484 of 2008

DULARI DEVI

..... Petitioner

Through : Mr. R.K. Sharma, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Mr. Amit K. Paul, Advocate.

WITH

W.P.(C) No. 3153 of 2008 & C.M. No.6085 of 2008

AVDESH SINGH

..... Petitioner

Through : Mr. R.K. Sharma, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Mr. Amit K. Paul, Advocate.

AND

W.P.(C) No. 3156 of 2008 & C.M. No.6090 of 2008

AJAY KUMAR

..... Petitioner

Through : Mr. R.K. Sharma, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Mr. Amit K. Paul, Advocate.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in

Digest?

JUDGMENT

S. MURALIDHAR, J.

1. The facts in these three petitions are more or less similar and therefore they are being disposed of by this common judgment.

2. Writ Petition (C) No.763 of 2008 is by Dulari Devi seeking a writ to quash an order dated 19th September 2006 passed by the Respondent Municipal Corporation of Delhi ('MCD') relieving her from service at the Leprosy Home (MCD), Tahirpur, Shahdara, Delhi. A further direction is sought to treat the Petitioner on duty with effect from that date.

3. Writ Petition (C) No.3153 of 2008 is by Avdesh Singh seeking similar relief in relation to an identical order dated 19th September 2006 relieving him from service at the Leprosy Home (MCD), Tahirpur, Shahdara, Delhi.

4. Writ Petition (C) No.3156 of 2008 is by Ajay Kumar seeking to challenge an order dated 23rd September 2006 asking him to produce proof of his appointment with the MCD prior to being posted at the Leprosy Home, MCD, Shahdara.

5. Each of these Petitioners claims that they were "appointed" as daily wagers in the Leprosy Home of the MCD at Tahir Pur, Shahdara. However, none of the Petitioners says from which date they were so

appointed. In fact each of the writ petitions is more or less similarly worded. In each of them it is stated that on 6th February/ 8th March 2004 a letter/order was given to the Petitioner by the Administrative Officer (Health) whereby each of them was asked to join duty with the Medical Officer In-Charge (MOIC) at the Leprosy Home, Tahir Pur, Shahdara.

6. Interestingly, in the order dated 6th February 2004 (copy of which is annexed to the writ petition) Smt. Dulari Devi is described as Daily Wager Ward Aya [under posting AO (H)] who is being "posted in the Leprosy Home Tahirpur Shahdara, Delhi against the vacant post of Daily Wager Ward Aya." In the case of Avdesh Singh the Office Order dated 8th March 2004 describes him as Daily Wager Ward Boy [Under Posting AO (H)] and it further states that he is being "posted in MOIC/Leprosy Home Tahir Pur Shahdara Delhi against the vacant post of Daily Wager." In the case of Ajay Kumar he is described the Office Order dated 6th February 2004 as Daily Wager Ward Boy PHC/Fatehpuri Beri Delhi. The order further states that he is being "transferred and posted to MOIC/Leprosy Home Tahir Pur Shahdara, Delhi with immediate effect." The common factor in each of the above orders dated 6th February/8th March 2004 is that there is a presumption that the Petitioner concerned was already working in the MCD at the time of his or her posting to the Leprosy Home, MCD, Tahir Pur, Shahdara, Delhi.

7. Each of the petitions then states that while the petitioners were continuing to discharge their duties at the Leprosy Home, Tahirpur,

Shahdara, they were suddenly asked by the MCD, by identically worded letters dated 19th September 2006, to produce any document or record as proof of their employment in the MCD prior to their posting at the Leprosy Home, Shahdara. Each of them replied on 21st September 2006 stating that this was their first employment. However they did not produce any document to show that prior to their posting at the Leprosy Home, Shahdara, they were employed in the MCD. Accordingly they were not permitted to resume duty thereafter.

8. Aggrieved by this action, Smt. Dulari Devi filed the aforementioned writ petition on 24th January 2008 the other two Petitioners filed their respective writ petitions on 11th April 2008. It is not indicated in any of these petitions why it took them over one year to approach this Court. Significantly none of the documents enclosed with the petitions indicate that any of the Petitioners was appointed in the MCD prior to being posted in the Leprosy Home, Tahirpur, Shahdara.

9. In response to the notice issued in these petitions, the MCD has filed its reply in each of the petitions giving the background. The case of the MCD is that none of these Petitioners was in fact ever appointed in the MCD. It appears that orders transferring them to the Leprosy Home, Shahdara were issued without there being any appointment letter to begin with. These facts came to light on or about 1st May 2006 when it was realized that several persons had managed to get employed in the MCD as daily wagers on the basis of fake documents and bogus transfer orders. A

notice was issued on 5th April 2006 by the MCD asking each of the daily wagers to produce details of their previous employment. On 12th June 2006 another notice was issued requiring all daily wagers at the Leprosy Home, Tahir Pur to furnish their attendance certificate and details of earlier employment in writing. It was stated in the notice that any delay in the regularisation of their services would be the responsibility of the employee concerned. When no such information was forthcoming, by separate orders dated 19th September 2006 each of the Petitioners was relieved from service.

10. It appears that in the meanwhile in regard to 127 others who had managed to get appointment in MCD on the basis of fraudulent/fake documents an Office Order No. ADC(H)/2006/3970 dated 1st May 2006 was issued. This Order stated that the services of the employees "who had managed to get appointment in MCD on the basis of fraudulent/fake documents are hereby terminated." On the same date, i.e. 1st May 2006 another Office Order No. ADC(H)/2006/3972 was issued in respect of 47 others. The second Office Order stated that the said 47 employees were suspected to have been engaged in getting employment on the basis of fraudulent/fake documents and they were directed to produce the original documents/records on or before 8th May 2006 failing which their services would stand terminated.

11. Both notices were challenged by way of Writ Petition (C) Nos. 8379-99 of 2006, 82685 of 2006 and 9576 of 2006 in this Court. By a judgment

dated 9th July 2007 a learned Single Judge held the termination of the services of the said persons to be bad in law as no enquiry was held prior to coming to the conclusion that these persons had obtained employment in the MCD on the basis of fraudulent or fake documents. Reference was made to Section 95(2) of the Delhi Municipal Corporation Act, 1957 ('DMC Act') which states that no such officer or other employee shall be punished either by censure, reduction in rank, compulsory retirement, removal or dismissal "unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." The only exception to this requirement was that the officer concerned who is empowered to remove the employee should be "satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause." After going through the records and the notings in the file the learned Single Judge concluded that no satisfaction had been reached by the officer concerned that it was not reasonably practicable to follow the procedure laid down in Regulation 8 and 8A of the relevant Regulations. In those circumstances it was held that termination of the services of those 127 employees without resorting to the procedure prescribed under Act and the Regulation was not valid. However the learned Single Judge did not deem it appropriate to direct reinstatement of the dismissed employees with back wages. Instead it was directed that an enquiry should be held by the MCD in these cases and completed within a period of six months and if any of those Petitioners established their bonafides they would be at liberty to claim the consequential benefits including back wages.

12. The aforementioned judgment of the learned Single Judge dated 9th July 2007 in Writ Petition (C) Nos. 8379-99 of 2006, 8268-85 of 2006 and 9576 of 2006 was carried in appeal to this Court by the MCD way of LPA Nos. 1156 of 2007 and 1184 of 2007. By a judgment dated 9th October 2007 a Division Bench of this Court dismissed the appeals. A separate but connected appeal being LPA No. 1156 of 2007 was filed by the MCD as regards the same judgment dated 9th July 2007. There it was argued that the Notice No. ADC(H)/2006/3972 dated 1st May 2006 should be construed to be a show cause notice since seven days' time was given to those 47 employees to produce documents to show that they were in fact engaged in the MCD on the basis of original documents. The Division Bench of this Court however dismissed the LPA No. 1156 of 2007 (*Municipal Corporation of Delhi v. Amit Kumar*) by an order dated 22nd September 2008. This Court held that the case of Amit Kumar, the writ petitioner in W.P. (C) No. 9576 of 2006 whose case stood covered by the impugned order of the learned Single Judge cannot be treated any differently from other Petitioners covered by that judgment.

13. Reverting to the present case it is clear from the facts narrated hereinabove that they stand on a different footing. In the first place, a separate show cause notice was issued to each of the petitioners by the MCD after the judgment dated 9th July 2007 passed by the learned Single Judge which in fact required the MCD to do so. Therefore there was no question of non-compliance with the procedure of providing the petitioners an opportunity to show cause. Secondly, the wording of the notice is also different from the wording of either the Office Order

No.3970 dated 1st May 2006 which covered 127 persons or the Office Order No. 3972 of 1st September May which covered 47 persons.

14. Mr. Amit K. Paul, learned counsel for the MCD has in fact correctly pointed out that none of these Petitioners has been able to show that they were ever employed in the MCD prior to their posting at the Leprosy Home, Shahdara. What they have produced in the Court is only the order either transferring them to or posting them at Leprosy Home, Shahdara. In fact each of these orders presupposes that they were already employed in the MCD when in fact they were not. Mr. Paul has categorically stated that MCD records do not show that any of these petitioners was in fact employed with the MCD. In that view of the matter there was no question of having to comply with Section 95(2) DMC Act read with Regulations.

15. During the hearing of these matters on 17th October 2008 the Court passed the following order:

“1. These cases will be treated as part heard matters.

2. In all three cases, the petitioners rely on similar orders dated 6th February 2004 issued by the Administrative Officer (Health), Municipal Corporation of Delhi ('MCD'), Shahdara, Delhi transferring them to the Leprosy Home Tahir Pur, Delhi.

3. It is the case of the MCD that each of these office orders were themselves fabricated orders because none of these persons were in fact initially appointed in the MCD. It is also the case of the MCD

because none of these persons were in fact initially appointed in the MCD. It is also the case of the MCD that despite show cause notice being issued to each of these persons none of them has been able to produce the original appointment letter indicating that they were at all appointed in the MCD.

4. Learned counsel for the petitioners states that in each of these cases he must be given one opportunity to produce before the Court orders issued by the MCD initially appointing them to posts from which they were sought to be subsequently transferred to the Leprosy Home Tahir Pur, Delhi by separate orders.

5. At the request of learned counsel for the petitioners, adjourned to 24th October, 2008.

6. It is made clear that there will not be further adjournment in the matter."

16. Thereafter the matter was further heard on 24th October, 7th November and 5th December 2008. At none of these hearings was the counsel for the Petitioners able to produce any document to show that any of the petitioners was employed with the MCD prior to their being posted at Leprosy Home, Tahir Pur, Shahdara. The orders that they have produced with the writ petition are premised on the basis that they were already employed with the MCD prior to such posting. Since this factual basis itself has not been substantiated by the Petitioners, they cannot be granted any relief as prayed for. The question of applying the procedure under Section 95 (2) DMC Act before removing them from service therefore cannot arise. In any event each of them was given a separate show cause

notice in reply to which they were unable to show that they were ever appointed in the MCD.

17. In the above circumstances, the inevitable conclusion is that none of the Petitioners was employed with the MCD prior to their posting at the Leprosy Home, Tahirpur, Shahdara. They appear to have managed to obtain orders posting them at the Leprosy Home, Tahir Pur on the basis that they were already employed in the MCD, when in fact they were not. The MCD was therefore fully justified in not permitting the petitioners to continue in service at the Leprosy Home beyond 19th September 2006.

18. There is no merit in any of these writ petitions and they are dismissed as such. The applications also stand dismissed.



S. MURALIDHAR, J.

19th DECEMBER, 2008
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