

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 22nd , 2008

WP(C) No.5494/2007

The Municipal Corporation of Delhi PETITIONER
! Through: Mr.O.P.Saxena, Advocate.

Versus

\$ Sh.Anil Kumar Sheel RESPONDENT
^ Through : Nemo.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

+ CM No.18053/2007 in W.P.(C) No.5494/2007

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This is an application by the petitioner for placing on record, some of the record of the trial Court.

For the reasons stated in the application it is allowed and the certified copies of the documents already on the record of the trial Court are taken on record of the present writ petition.

The application is disposed of.

W.P.(C) No.5494/2007

The petitioner has impugned the award dated 20th September, 2006 holding that the termination of the respondent who had worked from 20th October, 1995 till June, 1997 continuously and uninterruptedly was contrary to Section 25 F of the Industrial Disputes Act, 1947 and consequently directing reinstatement with effect from June, 1997 with 50% back wages as per Minimum Wages Act with all consequential benefits and continuity of services. By the same award the prayer of the workman seeking wages at par with his regular counterparts was declined and the claim of the petitioner for regularization was also disposed of holding that he will be entitled to regularization from his initial date of joining, as both the parties have agreed that there is a phased manner program policy of regularization of the management whereby the daily wagers are regularized as per their seniority.

The learned Tribunal has relied on the testimony of the witness of the petitioner admitting that the respondent workman had been working with effect from 20th October, 1995 on the post of LDC till May, 1997 continuously and uninterruptedly and that no notice or notice pay in lieu of notice was given to the respondent while terminating his services. The witness also admitted that the petitioner Corporation does not have any material or document to show that the workman was gainfully employed somewhere after his termination.

The Tribunal has relied on Central Bank of India Vs. S.Satyam & Ors, 1996 SCC (L&S) 1273 and Ghaziabad Development Authority & Ors Vs. Vikram Chaudhary & Ors, 1995 SCC (L&S) 1226 in support of the contention that the onus is on the management to prove that the workman was engaged for a specific period. Adverse inference was also taken against the petitioner for non production of relevant documents that is attendance register and muster roll. In the circumstances it has been held that the petitioner has failed to show that the workman was terminated with due process of law and consequently the petitioner was directed to reinstate the respondent with effect from June, 1997 with 50% back wages.

The learned counsel for the petitioner has relied on the statement of Mr.B.S.Tolia, Deputy Director (Admn) to contend that the respondent never worked under the said witness. Even if the respondent did not work under the said witness, the deposition of the said witness is categorical that he worked continuously with effect from 20th October, 1995 on the post of LDC till June, 1997. He also admitted that no notice or notice pay in lieu of notice was given to the respondent while terminating her services. Besides the testimony of the said witness there is no other evidence to show that the respondent did not work continuously and uninterruptedly. In the circumstances the inferences drawn by the Court do not suffer from

any perversity or manifest error nor the learned counsel for the petitioner is able to point out any such error which will entail exercise of jurisdiction by this Court under Article 226 of the Constitution of India.

While exercising powers of judicial review under Article [226](#) of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings of the lower courts and does not re-appreciate evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court

unless it suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749 B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or **whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of

inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”**

The finding of the tribunal that the respondent worked for more than 240 days is not based on any assumption by the Court below but on the specific deposition of the sole witness of the petitioner/Corporation. The inferences drawn by the Court below are inferable considering the facts and circumstances and this Court is not to substitute its inferences with that of the Court in the present facts and circumstances of the case.

In the circumstances, the learned counsel for the petitioner is unable to point out any perversity or manifest error in the award dated 20th September, 2006 nor there are violation of principles of natural justice. There are no grounds to interfere with the inferences drawn by the Court below and the writ petition is without any merit and is liable to be dismissed. The writ petition is therefore, dismissed, however, parties are left to bear their own costs.

January 22nd, 2008
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ANIL KUMAR, J.