

*

HIGH COURT OF DELHI AT NEW DELHI

+

LPA 1178/2007

%

Date of decision: 19th February, 2008

VIJAY PAL SINGH Appellant
Through Mr.Varun Parsad, Adv.

versus

N.D.M.C Respondent
Through Ms.Jyoti Singh, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

DR. MUKUNDAKAM SHARMA, CJ (Oral)

1. This appeal is directed against the order dated 27th February, 2007 passed by the learned Single Judge agreeing with award dated 7th April, 2004 passed by the Presiding Officer of the Industrial Tribunal holding that the appellant is not entitled to any relief of reinstatement and regularisation.

2. The appellant was working as muster roll employee with the NDMC and while working as such he was caught red handed stealing sprinkler valves on 19th June, 1993. A criminal case under Section 379/411 IPC was filed against him. The appellant did not report for duty after that. The criminal case was brought to trial and on conclusion of (LPA 1178/2007)

the trial, he was convicted on 6th August, 1994. However, by order dated 8th August, 1994 he was released on probation.

3. A representation was filed by the appellant in 1995 requesting the respondent to re-engage him and take him back in service. The said request was rejected by the respondent. A copy of the letter written by the respondent on 30th August, 1996 is on record. In the said letter the respondent informed the appellant while disposing of his representation dated 17th July, 1995 that he cannot be reinstated in the post of Chowkidar or Mali in the NDMC. The appellant did not raise any dispute nor challenged the same in any court of law till 2001 when he moved the appropriate government for making a reference upon which a reference was made by the appropriate government in the following terms:

“1. Whether the services of Shri Vijay Pal Singh s/o Shri Late Ram Swaroop have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect ?

2. Whether Shri Vijay Pal Singh s/o late Sh. Ram Swaroop is entitled to be regularised on the post of mali in proper pay scale, if so, from which date and what directions are necessary in this respect? “

4. The learned Industrial Adjudicator allowed the parties to file their respective pleadings and also to lead their evidence and on

conclusion of the proceeding passed the award dated 7th April, 2004 holding that the appellant was not a regular employee holding any post and was only a daily wager. It was also held that the offence of theft for which the workman was convicted cannot be said to be of technical nature nor was too trivial and rather it was an act involving moral turpitude and the theft was also of the property of the management. It was held that since the appellant was not a regular workman and was only a daily wager therefore the reference has to be answered in favour of the management and against the workman. It was also held that the workman was not a fit person to be given fresh appointment.

5. Being aggrieved by the aforesaid award, the appellant filed the writ petition which was considered by the learned Single Judge. The writ petition was dismissed on several grounds. The first ground on which the writ petition was dismissed was on the ground of inordinate delay and laches. The learned Single Judge held that not only the reference was delayed, for, the termination was made in the year 1993 but the dispute was actually raised in October, 2001 and that also without showing any reason for the delay in initiating the proceeding, but even the writ petition was barred by principles of delay and laches for the award was passed in April, 2004, whereas the writ petition was filed only in January, 2007 i.e. after a lapse of about three years. The second ground on which the writ petition was dismissed was that the

appellant was a daily wager and did not have any permanent right against the post on which he was working and since the termination of the appellant workman was in the nature of a punishment inflicted on him by way of a disciplinary action, therefore it cannot be said that it is a case of retrenchment. The appellant did not come and join duties but abandoned the service himself from June, 1993 when he stopped coming to the office. The submission that the since the appellant was released on probation, it should not be deemed to be conviction was also rejected by making reference to the decision of the Supreme Court in Union of India v. Bakshi Ram reported in AIR 1990 SC 987 wherein the Supreme Court has held thus:

“In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Sections 3 and 4 of the Act does not deal with conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

Section 12 of the Act does preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The Section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of

Section 12".

6. The learned Single judge agreed with the finding of the learned Industrial Adjudicator that the offence for which the workman was convicted was that of theft, and that too of the property belonging to the respondent NDMC itself, and that the offence was neither trivial nor of a technical nature and since the appellant did not report for duty after 19th June, 1996 therefore it was held that it is not a case of retrenchment and the respondent was justified in not giving fresh appointment to the appellant as the appellant is a person with the stigma of conviction.

7. The aforesaid findings are concurrent findings of fact arrived at by the Industrial Adjudicator and the learned Single Judge. The learned Single Judge appreciated the findings and the submissions made before him, and on re-appreciation of the said findings of facts came to the conclusion that the same are not required to be interfered with.

8. Sitting on the appellate side, we cannot re-appreciate the concurrent findings to come to a different finding altogether. The appellant has abandoned his job and did not come to join office after 19th June, 1993 and started representing only from the year 1995 and that also for seeking re-employment and/or for being taken back into duty which he himself abandoned in 1993. There was inordinate delay in preferring the reference and also in filing the writ petition. Therefore,

taking all the facts into consideration we find no reason to interfere with the findings recorded by the learned Single Judge. The appeal has no merit and is accordingly dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 19, 2008
"v"