

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 12557/2009**
% **Date of Decision: 22nd OCTOBER, 2009**
SHRI SAGAR (THROUGH LRs) PETITIONER
! Through: Mr. Sunil Lalwani, Advocate.
VERSUS
\$ M.C.D. AND ANOTHER RESPONDENTS
^ Through: Mr. Nawal Kishore Jha, Advocate

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

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

S.N.AGGARWAL, J (ORAL)

CM No. 13092/2009

Delay of three and a half months in refiling of the petition is condoned.

The application stands disposed of accordingly.

WP(C) No. 12557/2009

The legal heirs of the deceased workman late Sagar have filed this writ petition seeking to challenge an industrial award dated 30.09.2008 in ID No. 243 of 1988/53 of 1995 affirming the dismissal of the workman by the management of the respondent MCD.

2. The deceased workman, late Sagar was employed as a Beldar in MCD w.e.f. 12.07.1977. He was involved in a criminal case of attempt to murder and a FIR under Section 307/452/342/34 IPC was registered against him with Police Station Alipur on 07.02.1982. He started remaining absent from duty w.e.f. 08.02.1982. While he was absent from

duty, he was arrested by the Police in the aforementioned criminal case on 08.04.1982. He remained in custody from 08.04.1982 to 02.07.1982. The deceased workman was served with a charge sheet. Four charges were labelled against him. The first charge was for his unauthorized absence from 07.02.1982 to 09.08.1982. The second charge was in relation to his arrest and for his remaining in Police custody from 08.04.1982 to 02.07.1982 in a criminal case vide FIR No. 40 dated 07.02.1982 under Section 307/452/342/34 IPC, PS Alipur. The third charge was that he had failed to report the fact of his arrest to his Department and concealed this fact deliberately. The fourth charge was that he neither joined the duty during the period from 07.02.1982 to 07.04.1982 which was the period before his arrest on 08.04.1982 despite communication sent by the respondent vide letters dated 09.02.1982 and 03.03.1982.

3 A departmental inquiry into the above charges was held against the deceased workman in which he was found guilty of all these charges. After considering the Inquiry Report and on taking note of the conduct of the deceased workman, the respondent management vide order dated 28.04.2006 decided to remove the deceased workman from its service with a stipulation that the said removal shall not be a disqualification for his future employment.

4. The deceased workman being dissatisfied with his removal from the service of the respondent had raised an industrial dispute which was referred by the appropriate Government in the Government of NCT of Delhi for adjudication to the Labour Court. The Labour Court on scrutiny of the evidence produced by the parties before it, vide order dated 27.09.2008 held that the departmental inquiry conducted against the deceased workman was in conformity with the principles of natural

justice and no fault could be found with the same. Consequent thereto, the Court below vide impugned award dated 30.09.2008 has held that the removal of the deceased workman from the service of the respondent was justified in view of the charges proved against him.

5. Mr. Lalwani, learned counsel appearing on behalf of the legal heirs of the deceased workman contends that the punishment of removal from service awarded by the employer is disproportionate to the charges proved against the deceased workman. I am not impressed with this argument advanced on behalf of the petitioners. It is not disputed that the deceased workman was arrested in a criminal case and that he remained in police custody w.e.f. 08.04.1982 to 02.07.1982. It is also not disputed that the deceased workman had not informed the employer about the registration of the FIR against him or the fact of his arrest by the Police. Withholding of information of registration of FIR against him by the deceased workman amounts to a misconduct within the meaning of Rule 3(a) and Rule 18(1)(i) of Delhi Water Supply and Sewage Disposal Undertaking Service (Conduct) Rules, 1970 and he was rightly dealt with by the respondent under Section 95 of Delhi Municipal Corporation Act, 1957.

6. In the opinion of this Court, the punishment of removal from service awarded to the deceased workman by the respondent was commensurate with the charges of misconduct proved against him in the inquiry. The said punishment does not call for any interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution.

7. In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed in limine.

OCTOBER 22, 2009, ma

S.N.AGGARWAL, J