

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
25.

+ LPA 173/2009

SHEELA DEVI & ORS. Appellants
Through: Ms. Amita Singh, Adv.

versus

M.C.D. & ORS. Respondents
Through: Mr. Sanjeev Sabharwal, Standing Counsel
for MCD

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

% **ORDER**
27.07.2009

The appellants are the widow and children of late Sh. Dil Bagh who was working as a Mali/Beldar in Horticulture Department of the Municipal Corporation of Delhi. Late Sh. Dil Bagh raised an industrial dispute before the Industrial Tribunal-III for regularization of his services. Dil Bagh died during the pendency of the proceedings on 24.8.2002, survived by his widow and two sons and one daughter, who were minor at the time of his death. It appears that the daughter is mentally disabled, and one of the sons, i.e. Hans Raj is missing for the last several years. The daughter and the second son attained majority in 2006 and 2008 respectively. Vide award dated 1st August, 2003, the Industrial Tribunal-III declined the prayer of regularization. The writ petition preferred by the appellants before the learned single Judge was also dismissed on the ground of delay and laches. Hence, the appellants have preferred this Letters Patent Appeal.

2. The admitted facts are that late Sh. Dil Bagh was appointed as a Mali/Beldar on 30th December, 1984 in Khanjawala Nursery, Narela Zone of MCD. It appears that in course of time, other Malis/Beldars who were similarly
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situated were regularized in service. One Gauri Shankar, who was appointed as Beldar/Mali, also approached the Industrial Tribunal for regularization and in his case, he was directed to be regularized w.e.f. 1989 by a judgment of Sikri, J. in *MCD v. Gauri Shankar & Ors.*, **1995 V AD (Delhi) 905**. Late Sh. Dil Bagh made several representations to the Management to regularize his services as the action of the Management in employing him as a casual or temporary worker and to continue him for a number of years with the object of depriving him of the status and privileges of a permanent workman amounted to unfair labour practice, as provided in Section 2 read with Item No.10 of the 5th Schedule of the Industrial Disputes Act, 1947. The appropriate Government vide its order No. F.24(2977)/97-Lab/29468-74 dated 9.9.1997 referred the industrial dispute between the Management of MCD and late Sh. Dil Bagh for adjudication to the Industrial Tribunal III on the following terms of reference:

“Whether Shri Dil Bagh daily rated/casual/Muster Roll Baildar/Mali is entitled to be regularized on the said post in proper pay scale from his initial date of appointment i.e. 30.12.84 and whether he is entitled to difference of wages at par with his regular counterparts from 30.12.84 onwards and if so what directions are necessary in this regard”.

3. Before the Industrial Tribunal, the stand of the Management was that late Sh. Dil Bagh was arrested vide FIR No. 22 of 2.4.1992 under Section 302/201 IPC by Haryana police and he was subsequently arrested for offence under the Prohibition Act vide FIR No. 349/1997 and was in custody from 19.11.1997 to 03.01.1998. Further, according to the Management, in pursuance of the FIR No. 22, late Sh. Dil Bagh was arrested and was in police custody from 01.01.1992 to 04.02.1992. The contention was that since the criminal cases were pending against the workman, his services could not be regularized. On the above pleadings, the Tribunal framed the following issues for determination:

“ISSUES:

1. As per the terms of reference.
2. Whether the claim is maintainable? (OPM)
3. Whether the workman union has the locus standi to file the claim? (OPW)
4. Whether the claim is barred by delay and laches? (OPW)
5. Whether the claim is not maintainable for the reasons stated in Para 4 to 6 of the Preliminary Objections of W.S.? (OPM)”

4. On the basis of evidence led by the parties, the Tribunal decided issues No. 2 to 4 in favour of the workman. However, in so far as issue No.1 and 5 are concerned, the Tribunal held that the services of the workman could not be regularized since there were criminal cases pending against the workman and there was a break in service on account of the workman being in judicial custody. The Tribunal further held that since the workman had died during the pendency of the proceedings, the question of regularizing his services does not survive.

5. We have heard Ms. Amita Singh, learned counsel appearing for the appellants and Mr. Sanjeev Sabharwal, standing counsel for the respondent MCD. In our opinion, it is impossible to sustain the award of the Industrial Tribunal-III. It is clearly seen that the respondent MCD has suppressed the facts from the Industrial Tribunal. In fact, in the earlier proceedings between the MCD and the deceased workman being I.D. No. 83/1995, the termination of the workman on account of pendency of the criminal case (FIR No.22 of 2.4.1992) was challenged before the Industrial Tribunal. The Industrial Tribunal recorded a categorical finding that the workman was acquitted in the criminal case by the Learned Additional Sessions Judge, Rohtak vide his order dated 12.5.1993 and set aside the termination order of 01.01.1992 and directed the MCD to reinstate the workman in service. The Tribunal also directed the MCD to pay the back wages to the workman for the period

01.01.1992 to 27.4.1994. Thus, the MCD was not right in contending that the regularization could not be granted because of the pendency of the criminal cases and the break in service on account of the detention of the workman in the police custody. In so far as the offence under the Prohibition Act is concerned, there is nothing to show that any criminal case was lodged in Court against the workman by the police. Therefore, the Industrial Tribunal was clearly wrong in denying the workman's prayer for regularization on account of the pendency of the criminal cases against him.

6. We may also mention that in *MCD v. Gauri Shankar* (supra), the Tribunal had held that the workman was entitled to regularization from the date of his appointment, i.e. 25.10.1983. The stand of the MCD before this Court was that the workman Gauri Shankar was entitled for regularization from 1.4.1989 as his turn for regularization came only in April, 1989. This stand of the MCD was accepted by Sikri, J. and a direction was given to the MCD to regularize the services of the workman Gauri Shankar from 1.4.1989. In the present case, the MCD has not cared to produce on record the seniority list or the other material relating to regularization of Malis/Beldars in its establishment and it is not clear as to when the turn of late Sh. Dil Bagh came for regularization. We presume that in view of the fact that Gauri Shankar's services came to be regularized in April, 1989, ordinarily the services of the workman in the present case would have been regularized by April, 1990 since Gauri Shankar's appointment was one year prior to Dil Bagh.

7. Our attention was also drawn to a decision of the Supreme Court in the case of ***Jeet Singh v. MCD, AIR 1987 SC 1781***. In that case, the writ petition was filed by Class IV employees of MCD before the Supreme Court. They were in continuous employment for several years and their services were regularized by the MCD. The Supreme Court held that they are entitled

to salary and allowances on the same basis as paid to regular and permanent employees from the date of their continuous employment. The order passed by a two-Judges bench in Jeet Singh's case (supra) is reproduced below:

"We understand that the services of the petitioners have been regularised recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the Salary and Allowances as are paid to regular and permanent employees on the principle of equal pay for equal work. Following the Order made in the Writ Petitions Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the Salary and Allowances on the same basis as paid to regular and permanent employees from the date of their continuous employment. Respondents will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioners within 3 months from today. The matter is disposed of accordingly."

8. In the present case, the workman died in 2002 leaving behind his widow who is an illiterate housewife and three children, who were minor when he died. As indicated earlier, one of the sons is missing for the last several years and the other son attained majority only in 2008. It appears that the family had applied for compassionate appointment for the son Anil which request was turned down by the MCD in January, 2008. It is well settled that ordinarily a litigant does not stand to benefit by lodging an appeal belatedly. In our opinion, in the present case, refusal to condone the delay will result in a meritorious matter being thrown out at the very threshold and the cause of justice will be defeated. As a result of the death of the workman, the family has become practically destitute. In our opinion, this is a fit case where the delay in approaching this Court ought to have been condoned and the case should have been decided on merits.

9. In the result, we declare that the workman Sh. Dil Bagh was entitled to be regularized in service with effect from 1st April, 1990 and was entitled receive salary of a regular and permanent workman from 1st April, 1990 till his death, i.e., 25.8.2002. The widow of the workman will be entitled to

family pension in accordance with the scheme applicable to MCD. The differential amount along with the family pension shall be released to appellant No.1 within a period of six weeks from today with simple interest @ 9% from the date on which such amounts became due and payable to the workman and his family. The appeal stands disposed of.

CHIEF JUSTICE

MANMOHAN, J

JULY 27, 2009
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