

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

+ **W.P(C) No.7095/2010**

% ***Date of Decision: 15.02.2011***

MCD & Ors. *Petitioners*

Through Mr.Gaurang Kant, Advocate

Versus

Hem Raj & Ors. *Respondents*

Through Mr. M.K.Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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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.

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1. The petitioner, Municipal Corporation of Delhi has challenged the order dated 17th February, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A No.1052/2009 titled as 'Hemraj & Ors v. Municipal Corporation of Delhi & Ors' directing the petitioners to consider the respondents for the existing vacancy and future DEO (Data Entry Operators) posts in MCD including the 8 posts in the Finance Department of MCD subject to their eligibility as per

rules and the order dated 4th June, 2010 dismissing their review application being R.A No.156/2010 titled as 'Municipal Corporation of Delhi & Ors v. Hemraj & Ors'.

2. Brief facts to comprehend the disputes between the parties are that in September, 1996 a computer network was started in the education department (HQ) of Municipal Corporation of Delhi. This was pursuant to notification No.F.10(20)/99/DES/PT-II which was issued by the Government of NCT of Delhi, Directorate of Economics and Statistics with the approval of Government of India, Ministry of Home Affairs. By Notification No.F.27/59-Hom(1) dated 13th July, 1959 the Learned Governor was pleased to make rules for method of recruitment for appointment of Data Entry Operator Grade A, B and C.

3. Since no skilled incumbents in the departments of the petitioners were available to operate the computers and to prepare programs, petitioners had engaged the respondents to work on the computers. However, they were appointed on the post of peon on daily wage basis and they were given salaries against the post of the school attendant. All the respondents had knowledge and training of data entry operators and from their dates of appointment with the petitioners they were engaged up to 31st March, 1997 as data entry operators. Sanction for their appointment was extended from time to time and last sanction was to expire on 6th September, 1999. All the respondents have

diplomas in computer application courses after qualifying their 10+2 or having graduate degrees.

4. The petitioners contended that they had been looking after the computer record work of 20,000/- teachers, headmasters and 6000 class-IV employees of 1800 primary schools of MCD where more than 8 lakhs children in the age group of 5 to 11 years study. The work which they had been performing was preparation of salary bills and record of teachers recruitment cell; data feeding in the computer in the two shifts and preparation of GDP statements, seniority list post based records related with promotion of headmasters, grant of senior scale and selection grade etc.

5. Though the respondents had to be regularized as skilled workers but they were adjusted against the vacancy of school attendants on daily wages at the rate of Rs.74.50/-, and a total wage per month payable to them was not more than Rs.1500/- per month. According to the respondents despite the recommendation by the Commissioner, Municipal Corporation of Delhi to the Secretary, MCD for creation of one post of computer programmer, 8 posts of computer operators and two posts of peons in the education department, the posts were not created and they continued as daily wagers in the teacher recruitment and computer cell and their wages were computed on 89 days basis, though for all intent and purposes the respondents are regular

employees except in the matter of payment of regular pay and other benefits attached to the post of computer operator/data entry operator.

6. The respondents also contended that they are fit and eligible to be appointed to the post of computer operators/data entry operators as they all hold senior school certificate, have a speed of 8100 key depressions per hours; certificate/diploma in computer application and have worked for more than one year satisfactorily and are up to the mark. According to the respondents they fulfill all the eligibility conditions of Delhi Administration under its Recruitment Rules for appointment as computer operators/data entry operators.

7. In these facts and circumstances the respondents gave representation for their regularization in the pay scale of data entry operators (DEO) (Rs.4000-6000/-) and also represented that keeping them as a school attendant on daily wages or even in the pay scale of Rs.2440-3200/- was a great injustice to them and was nothing short of exploitation. The respondents also relied on various correspondences of the petitioner reflecting that there were recommendations for engaging the respondents as regular data entry operators especially as they had been working as data entry operators since 1995.

8. After the petitioners failed to appoint the respondents as data entry operators, Respondents filed a writ petition in the High Court

being W.P(C) No.4483/1999 praying inter-alia for perusing the records of the petitioners and to direct the petitioner to appoint them to the regular post of computer operators/data entry operators from the date of their initial appointment. The reliefs prayed by the petitioners in their writ petition were as under:-

(a) to issue Rule Nisi on the Writ Petition and call for the respondents record relating to the employment of petitioners and after going into the legality and validity of their appointment/recruitment of the petitioner on Daily Wage basis instead of regularization, call upon them to Show Cause as to why the reliefs asked for herein be not granted to the Petitioners;

(b) to issue a writ of mandamus, or any other writ order or direction against the Respondent MCD to treat the Petitioners as regular employees of Municipal Corporation of Delhi and that regular scales of pay with other allowances and benefits attached to the posts of Computer Operator/Data Entry Operator effective from the date of initial appointment be granted to them. Further direct the respondent for payment of difference of regular pay in the scale of Rs.4000-100-6000+JA=CA after deducting Daily Wages paid to the petitioners.

(c) to direct by Writ of mandamus that Respondents forthwith regularize the petitioners employment from the date of initial appointment and give petitioners all benefits that would have been admissible to them had petitioners been appointed on regular basis. The petitioners be also awarded interest @18% p.a. on all the arrears of pay and allowances payable to him.”

9. In the writ petition the respondents also sought an interim order not to terminate and discontinue their services. The High Court granted interim order stipulating that the respondents’ services will not be

terminated/discontinued and no outsider would be appointed as a daily wager to operate the computers, replacing the respondents. The respondents also challenged the action of the petitioner to circumvent the interim orders passed by the Court, as they had been transferred as school attendants or nursery Ayas by order dated 9th November, 1999 and 11th November, 1999. The High Court passed an order dated 22nd January, 2002 on the representation of the petitioners that some of the vacancies are going to arise in the Municipal Corporation of Delhi after 31st March, 2002 and that the respondents be allowed to apply for the same and that the petitioners should consider the case of the respondents according to their rules, subject to the requisite qualification and services rendered by the respondents with the petitioners.

10. The High Court after considering attendance sheets and wage payment copies confirmed the interim order regarding not to discontinue the services of the respondents during the pendency of the writ petition. On 24th July, 2002 when the interim order was confirmed it was stated by the Municipal Corporation of Delhi/petitioners that filling up of vacancies on regular basis would take a couple of months more. Consequent to the statement on behalf of petitioners it was directed that the petitioners would endeavour to complete the process of

filling up the regular vacancies expeditiously. The order dated 24th July, 2002 passed by this Court is as under:-

“Rule.

Learned counsel for the Petitioners says that the Petitioners are computer operators but are being made to work as School Attendants.

Learned counsel for the Respondent/M.C.D. states that he has no instructions in this regard. If the submission of learned counsel for the Petitioners is correct, the matter may be looked into by the Respondents.

With regard to filing up of vacancies on a regular basis, learned counsel for the Respondent/M.C.D. states that the process will take a couple of months more. The M.C.D. should endeavour to complete the process of filling up the regular vacancies expeditiously.

Dasti.

C.M. No.8555/1999

Interim order passed on 1st September, 1999 is confirmed till the disposal of the writ petition.

C.M. stands disposed of.

C.M. No.152/2000

The additional documents are taken on record. C.M. stands disposed of.”

11. Thereafter pursuant to notification No.S.O.2580(E) dated 1st December, 2008 under sub Section (3) of Section 14 of Administrative Tribunals Act, 1985 the writ petition being W.P(C) No.4483/1999 was transferred to the Central Administrative Tribunal, Principal Bench where it was registered as T.A No.1052/2009. Before the Tribunal an

additional affidavit was filed by the respondents disclosing that for creation of 14 posts of data entry operators most of the concurrences had been obtained. This fact was, however, disputed by the counsel for the petitioners. It was rather contended that there were no posts of DEO in MCD nor were there are any recruitment regulations for appointment to the posts of data entry operators.

12. This was not disputed that the respondents had been engaged in 1995/1996 to do the work of data entry operators on a daily wage basis but they were appointed to the post of peons and in 2005 they were regularized to the post of school attendants.

13. Later on the petitioners raised the plea that the competent authority of the petitioners on 21st August, 2006 and 9th March, 2007 had decided that there was no need to create the posts of data entry operators and data entry work should be out sourced. This statement was contrary to the stand taken by the counsel for the petitioners in 2002 that the posts of data entry operators would be created in few months and the respondents shall be considered for the said posts. Though 9 posts of data entry operators had already been created in the Municipal Corporation of Delhi, finance department, however, the contention raised on behalf of petitioners was that these posts were created in the finance department and not in the education department and for filling up the posts of data entry operators in the finance

department, recruitment regulations of Government of NCTD would be applicable. The Tribunal in the facts and circumstances noted that though 8 posts of data entry operators in the finance department had been created, but the petitioners had denied the creation of any posts of data entry operators. On being confronted before the Tribunal with the fact that 8 posts of data entry operator had been created, the respondents changed their stand and contended that the 8 posts of data entry operators were in the finance department and that they were not meant for the education department. The Tribunal noted that the counsel for the petitioners did not furnish correct information on the availability of DEO in the MCD despite a number of adjournments granted to them. It was also held that the 8 posts of data entry operators were vacant and since even according to the petitioners the regulations of Government of NCTD were applicable for these posts, therefore, the respondents who have already been regularized to the posts of school attendants ought to be considered for these 8 posts of data entry operators along with similarly placed persons available in the Municipal Corporation of Delhi. The Tribunal also discussed the doctrine of legitimate expectation and relying on a number of precedents of the Supreme Court directed the petitioners that the respondents have established their case and they are entitled to be considered for the existing 8 vacant posts of data entry operators in the

Municipal Corporation of Delhi and for future posts. The relevant observations of the Tribunal are as under:-

8. There is no dispute that the Applicants were engaged in 1996 by the Education Department of MCD on daily wage basis. The Applicants were selected for the post of DEO on daily wage basis. It is also not in dispute that their services were utilized for data entry in Head Quarter Computer Cell of MCD. They, as per the Respondents letter dated 9.12.1998 (Page 34), were recommended to MCD Care Taker Department to issue them Identity Card as Computer Operators in MCD. It is also not in dispute that they were paid as per the rate of daily wages School Attendants. It is admitted fact that Respondent-Education Department of MCD processed the proposal to create DEO posts to regularize the Applicants, but the Education Department could not succeed in its effort and were directed to outsource such data entry functions as per the MCD Guidelines. As per the latest position explained during the hearing by the Counsels for both sides, I find that (i) there exist 8 posts of DEO in the office of the Financial Management and Budget as per the MCD Resolution No.573 of 19.01.2006 (Annexure-P1); (ii) the Respondent MCD has been following the Delhi Government Recruitment Rules for the DEO (Grade-A); (iii) no post of DEO has been created/sanctioned for the Education Department; (iv) it is revealed from the pleadings that the Department of Information Technology of MCD has issued Guidelines dated 10.6.2004 (Annexure-R2) for data entry service; (v) it is also noted that the Applicants were engaged for computer operations for a long period and were paid daily wages meant for School Attendants and (vi) it is found that all of them having moved the Hon'ble High Court on 28.07.1999, the Respondent though promised/committed before the High Court to regularize them as DEO, got them transferred as School Attendant in 9.11.1999 and were regularized as School Attendants in the year 2005.

9. Thus, the only issue that remains is on regularization or appointment of the Applicants as DEO. Even though Respondent MCD created 8 post of DEO in Finance Department, the Respondents all along denied to have any post of DEO. Confronted with question from the Bench that

DEO posts were created in MCD in January 2006, the Counsel for the Respondents argued that those were not meant for Education Department, nor she could inform about the vacancy position of the DEO. The Counsel for Respondents definitely did not furnish the correct information on the availability of DEO in MCD. Too many adjournments were granted to furnish the facts. Though, I am not drawing adverse conclusion against the Respondents, but I note the non-responsive attitude before the Court. However, taking note of the interim directions of the Hon'ble High Court vide its order dated 1st September, 1999 and confirmed on 24.7.2002, I conclude that those 8 posts are still vacant. The Applicants, though already regularized in the post of School Attendant, if eligible as per the Recruitment Rules for DEO of the Delhi Government adopted by the Respondent MCD, the Applicants would be entitled to be considered for those DEO posts along with similarly placed persons available in the MCD."

14. The petitioners filed an application for review of the order dated 17th February, 2010 by filing a review application being R.A No.156/2010 which was dismissed by the Tribunal by order dated 4th June, 2010 against which orders the present writ petition has been filed. This Court issued rule D.B and directed the petitioners to produce the relevant file in which decision was taken to deploy 8 persons as data entry operators in the education department of the Municipal Corporation of Delhi or the relevant file in which decision was taken to regularize the respondents as school attendants. On 31st January, 2011 time was again sought by the petitioners to produce the relevant record to show as to what has been done by them to finalize the recruitment to the post of data entry operators. Today when the matter has been taken

up it has been revealed that the Recruitment Rules for appointment to the post of data entry operators have not been finalized. The learned counsel for the petitioners has very emphatically contended that 8 posts of data entry operators are in the finance department and not in the education department.

15. We have heard the learned counsel for the parties in detail and have also gone through the entire record before us. This is not disputed that since their appointment the respondents are working on the computers and computer network as data entry operators and other related works though they had been given the post of school attendants. No justifiable reason has been disclosed as to why the petitioners who had qualified to do the work of data entry operators should have been appointed to the post of peons. Even after such a protracted litigation they were regularized again to the post of school attendants and not as data entry operators. Though from the record it is apparent that there have been various recommendations and suggestions for the creation of the post of data entry operators, however, the posts have not been created except 8 posts only. In any case attempts had been made as has also been observed by the Tribunal, not to disclose about the 8 posts of data entry operators during this period. These 8 posts of data entry operators at the first instance were not revealed and when it became apparent that the 8 posts were created, the appointment of respondents

to those posts was opposed on the ground that they are in the finance department. The finance department is under the Municipal Corporation of Delhi and so is the education department. This is not the case of Municipal Corporation of Delhi that the Recruitment Rules for appointment to the post of DEO in the finance department and in the education department are different. Rather, the stand of the petitioners is that the Recruitment Rules of the Government of NCTD are applicable for those eight posts in the Finance Department. If that be so it cannot be contended by the petitioners that for filling up the 8 posts allegedly in the finance department the respondents shall not be eligible, or that the respondents cannot be considered for appointment, if the respondents are eligible for appointment to posts in the Finance department.

16. The learned counsel for the petitioners has also failed to show any such facts which would establish that the respondents who have been working as data entry operators since 1995 though they were appointed to the posts as peons on daily wages and thereafter regularized to the post of peons since 2005, would be ineligible for appointment to the post of data entry operators for the posts in finance department. No facts has been disclosed that the work of data entry operators in education department would be so different or varied that the data entry operators of education department would not be competent or

handle the work of data entry operator of Finance Department. A copy of the Recruitment Rules of Government of NCTD for the post of data entry operators has been perused and if the stand of the petitioners is that for the 8 posts of data entry operators in the finance department, the Recruitment Rules of Government of NCTD are applicable, it is apparent that the respondents with their qualification fulfill the requirement of the rules of Government of NCTD, which are the rules according to the petitioners for the posts in the Finance department of petitioners.

17. In the circumstances, the petitioners have failed to make out any cogent ground as to why the respondents shall not be eligible for consideration for appointment to the 8 posts of data entry operators which have already been created in the Municipal Corporation of Delhi in the finance department or for consideration for appointment to the future post of data entry operators in the Municipal Corporation of Delhi. If that be so the petitioners have failed to make out any illegality or irregularity or any perversity in the order of the Tribunal dated 17th February, 2010 directing the petitioners to consider the respondents who have already been regularized as school attendants, to be considered for the existing posts and for the future posts of data entry operators in the Municipal Corporation of Delhi. Resultantly there are no grounds to interfere with the order of the Tribunal and the writ

petition is liable to be dismissed. Therefore in the totality of the facts and circumstances, the writ petition against the order of the Tribunal dated 17th February, 2010 passed in T.A No.1052/2009 titled as 'Hemraj & Ors v. Municipal Corporation of Delhi & Ors' directing the petitioners to consider the respondents for the existing vacancy and future DEO (Data Entry Operators) posts in MCD including the 8 posts in the Finance Department of MCD subject to their eligibility as per rules is dismissed as being without any merit. Considering the facts and circumstances the parties are, however, left to bear their own cost.

ANIL KUMAR, J.

February 15, 2011.
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VEENA BIRBAL, J.