

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

% W.P.(C) 16149/2004

+ Date of Decision: 16th May, 2012

INDER RAJ KUMAR Petitioner
! Through: Mr. Anuj Kr. Garg, Advocate

Versus

\$ DELHI JAL BOARD Respondent
Through: Mr. Suresh Tripathi &
Mr. Mayank Singh Chauhan,
Advocates.

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioner-workman is aggrieved by the award dated 4th October, 2002 passed by the Presiding Officer of the Industrial Tribunal-III, Delhi(in short ‘the Tribunal’) rejecting his claim for his being treated as a regular LDC from the date of his initial appointment on a muster roll LDC with the respondent-management.

2. The petitioner-workman admittedly was engaged by the respondent-management as a muster roll LDC in the year 1984. He continued to work as such till 1988 when the respondent-management decided to regularize the muster roll LDCs. The muster roll LDCs were then required to take a written test as well as to clear the typing test upon their clearing the written test. The petitioner-workman appeared in the written test held in the year 1988 and passed also but failed in the typing test which was also held in the same year. Next written test was held in December, 1989 but the petitioner-workman did not take a chance in that test. In July, 1991 the respondent-management came out with a circular to the effect that those muster roll LDCs who had failed to qualify the written test held in December, 1989 were being given another chance to clear the written test and to take the typing test upon passing the written test. That test was held in October, 1991 and thereafter a typing test was also held for those who could clear the written test.

3. It is the case of the petitioner-workman that he should have been given a chance to take the typing test without requiring him to qualify the fresh written test and after depriving him of that opportunity his juniors were regularized

in the year 1992 though it has also been submitted by the counsel for the petitioner that those juniors were those who had failed in the written test held in December,1989 and had taken fresh written test in pursuance of the circular dated 11.07.91 as well as the typing tests held between April,1990 and June,1990(Vide Annexure-D to the written petition). According to the respondent-management, the petitioner-workman should have appeared again in the written tests held room time to time and the basis of his success in the written examination held in 1988 he could not be permitted to take another typing test.

4. As per the further case of the petitioner-workman some of the muster roll LDCs who could not clear the written tests and typing tests had approached the Supreme Court for their regularization without subjecting them to fresh written/typing tests. Pursuant to some directions given by the Supreme Court all those who had failed in written tests were allowed to appear in fresh written/typing tests and those who had cleared the written tests but failed in typing test were allowed to take fresh typing test without taking fresh written examination, as was being insisted upon in the case of the petitioner. Thereafter, another circular was issued by the

respondent-management on 30th November, 1994 to the effect that those muster roll LDCs who had qualified the written test held in December, 1989, August, 1992 and October, 1993 and had not opted for regularization in Class IV posts(for which they were not required to clear any typing test) and were still continuing as muster roll LDCs could participate in the typing test to be held and the date for which was to be fixed and intimated to the concerned employees in due course. Counsel for the petitioner has not disputed that that circular was meant for those who had cleared the written test but not the typing test.

5. The petitioner felt that since he had already cleared the written test in September, 1988 should also have been given the chance this time also to take the typing test straightaway he made a representation in January,1995 to the respondent-management to give him chance to appear in the type writing test. However, that request of the petitioner was declined by the respondent-management vide its communication dated 8th March, 1995. He, however, made another representation on 09.06.1995 but that also was rejected on 19.09.1995. Yet another representation was made by the petitioner-workman on 26th June, 1996 requesting the respondent-management to

permit him to take the typing test on the basis of his success in the written test in September, 1988. He claimed that the Supreme Court had not ordered that those LDCs who could not clear the typing test prior to the year 1989 were not to be eligible to take another typing test on the basis of their success in the written test held in the year 1988 in which he had passed and so he should be permitted to take typing test only. This time, however, respondent-management accepted his request and vide its communication dated 23rd July, 1996 he was allowed to sit in the forthcoming typing test and he was granted exemption from appearing in any fresh written test. Undisputedly, the petitioner took typing test on 24.08.96 and he cleared the same and accordingly he was given regular appointment as LDC but with effect from 25th September, 1996.

6. After having got the regular appointment as LDC and accepting the same the petitioner-workman decided to raise an industrial dispute that he should have been regularised as LDC from the initial date of his appointment as muster roll LDC by approaching but since the labour authorities but sine he could not get any relief from the respondent-management the dispute raised by him and some other similarly placed

workers came to be referred to the Labour Court vide reference dated 11th September, 1997. The terms of reference made are re-produced below:-

1. *“Whether S/Sh. Y.N. Sharma, Rajender Singh Bhadana, Ashok Kumar, Sudhir Kumar, Raj Singh Chauhan, Krishan Kumar Bhiduri, Inder Raj Kumar, Suraj Pal Singh and Deepti are entitled to be regularized on the post of L.D.C. from their respective initial date of appointment instead of 25.09.96 in proper pay scale and whether they are entitled to wage difference from their date of appointment to 24.9.96 at par with their regular counter parts and if so what directions are necessary in this regard?”*

2. *Whether S/Sh. Bhagwan Dass and Kanwar Pal muster roll LDC are entitled to be regularized on the said post from their respective initial date of appointment in proper pay scale and whether they are entitled to wage differences for their muster roll employment at par with regular counter parts and if so what directions are necessary in this regard?”*

7. Before the Labour Court the concerned workmen, including the petitioner herein, filed their joint statement of claim claiming their regularization as LDCs from their initial appointment as muster roll LDCs. The respondent-management contested the claim of the workmen on various grounds. Finally after full trial, the Labour Court gave its award on 4th October, 2002 whereby part of the claim of the workmen was accepted by the Labour Court by directing

payment of difference in wages payable to the regular LDCs and the muster roll LDCs from the date of their initial appointments upto 24th September, 1996. Their claim for regularization from the initial dates of their appointment as muster roll LDCs, however, was rejected.

8. Feeling aggrieved, this writ petition was filed by the petitioner-workman only and none of the other workman is stated to have challenged that award.

9. Learned counsel for the petitioner-workman has submitted that he was entitled to get relief of regularization from the date when other muster roll LDCs, who were permitted to sit in the first type writing test conducted in pursuance of the circular dated 30th November, 1994 and had passed, were regularised because he was unjustifiably denied the opportunity to sit in that type writing test. It has also been contended the fact that the petitioner-workman was entitled to sit in the fresh type writing test on the basis of his success in the written test held in September, 1988 is evident from the fact that in the year 1996 the respondent-management itself had given him the exemption from passing another written test and belated acknowledgement of the petitioner's right by the respondent-management cannot be

considered to be a negative factor for the petitioner-workman by not giving him the regularization at least from the date when his juniors were regularized and in any case he could be given notional regularization to save his seniority. It is mentioned here that during the course of hearing the counsel for the petitioner had not pressed for the prayer for relief of his regularization from the date of his initial appointment as a muster roll LDC.

10. Learned counsel for the respondent-management submitted that this writ petition is totally misconceived as no infirmity and illegality has been committed by the Labour Court in denying the claim of the petitioner-workman. It has also been contended that though the petitioner-workman was given relaxation and exemption from appearing in a fresh written test in the year 1996 but that relaxation was not permissible under the relevant rules of the management and appeared to have been given to the petitioner-workman by some official contrary to the rules and, therefore, the petitioner after having got benefitted from that illegal exemption cannot claim any further benefit from Court. It was also contended that in these circumstances even equity is not in his favour and he cannot be permitted to take

advantage of the misplaced sympathy shown to him by some official of the respondent-management.

11. After having given my thoughtful consideration to the entire aspect of the matter I am of the view that this writ petition deserves to be dismissed. I find full merit in the submission of the learned counsel for the respondent-management that the petitioner-workman having availed of the exemption from clearing another written test could not thereafter raise the grievance that he should have been given regularization retrospectively. The petitioner-workman admittedly could not have been regularized without clearing typing test which he cleared only in the year 1996 and, therefore, he could not have been regularized from 1984 or, for that matter, from any year before 1996.

12. When a written test was conducted in December, 1989 and typing test was also held in May, 1990 for those candidates who had qualified the written test held in December, 1989 he had not requested the management at that time that he should be permitted to take typing test to be held in May, 1990 and also the test held in January, 1993, which admittedly were held. It was only after he had passed in the second typing test after having obtained the benefit of

exemption from giving fresh written test in the year 1996 that the petitioner started claiming that he was wrongly denied the chance to appear in the typing test held before 1996. In my view, the petitioner was estopped from raising that dispute and particularly when he has failed to show that he could be granted the exemption which he got in 1996.

13. I, therefore, find no illegality in the award of the Labour Court justifying any interference by this Court. This writ petition is, therefore, dismissed.

P.K. BHASIN, J

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