

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

% **W.P.(C) 6580/2002**

+ **Date of Decision: 29th February, 2012**

M.C.D. **....Petitioner**

! **Through: Mr. Mukesh Gupta & Ms. Manpreet Kaur, Advocates**

Versus

\$ **SIRPAL & ORS.** **...Respondents**

Through: Mr. Atul T.N., Mr. Sushant K. Thakur & Mr. Ashwani Kumar, Advs. for R-1

CORAM:

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

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioner challenges the Award dated 16th March, 2001 passed by the learned Industrial Tribunal whereby the reference made to it by the appropriate Government in respect of the industrial dispute raised by the respondent no. 1-workman in respect of his claim for his regularization as Electric Motor Driver with effect from 15th May, 1977 in the pay-scale of ₹ 260-400 was answered in his favour and he was ordered to be regularized as Electric Motor Driver with effect from 15th May, 1977.

2. The respondent no. 1-workman was appointed in the electricity department of Municipal Corporation of Delhi (hereinafter to be referred as 'the management') as a daily wage Beldar on 9th March,

1973. He claimed that he had been doing the duties of Electric Motor Driver with effect from 15th May, 1977. The management confirmed him on 26th April, 1988 but as a Beldar with effect from 1st April, 1980 in the pay-scale 196-3-220-3-232. The respondent no. 1-workman's grievance was that he should have been confirmed as Electric Motor Driver from 15th May, 1977 when he was asked to perform the duties of that post. The management having not acceded to that demand he raised an industrial dispute which in due course came to be referred to the Industrial Tribunal for adjudication. Before the Industrial Tribunal the respondent no. 1-workman had filed his statement of claim in which he had pleaded the aforesaid facts. The management had refuted the claim of the petitioner in its written statement that he should have been regularized as Electric Motor Driver.

3. The Industrial Tribunal after examining the evidence adduced from both the sides came to the conclusion in the impugned Award that the respondent no. 1-workman was working as Electric Motor Driver from the year 1977 to 1988, as had been claimed by him and therefore, he should have been regularized as Electric Motor Driver and not as a Beldar.

4. Feeling aggrieved, the petitioner-management approached this Court by filing the present writ petition.

5. It was contended by the learned counsel for the management that the impugned Award passed by the Industrial Tribunal is not at all sustainable and consequently is liable to be set aside by this Court. It

was also contended that the demand of regularization of the respondent no. 1-workman as Electric Motor Driver was even otherwise not tenable for the reason that he was not fulfilling the eligibility criteria for that post as per the relevant rules.

6. Learned counsel for the respondent no. 1-workman, on the other hand, submitted that this was a case of gross discrimination on the part of the management inasmuch as many employees who were junior to the respondent no. 1-workman and had also been appointed as Beldars initially, as is the case of respondent no. 1, but were working as Electric Motor Driver were regularized as Electric Motor Drivers while the respondent no. 1-workman was regularized only as a Beldar. It was further contended that the management itself had taken a policy decision in compliance of the judgment dated 4th February, 1987 of this Court in W.P. (C) No. 1373/1980 to regularize the daily wagers on post to post basis and many daily wage employees were accordingly regularized on the posts for which they were performing duties even though they were initially appointed as Beldars. It was also contended that some employees who had been given the relief of regularization as Electric Motor Drivers under various Awards by the Industrial Tribunal and when the management had challenged those Awards, this Court had refused to interfere. My attention was drawn to some of those Awards and the orders passed by this Court in different writ petitions, copies whereof were filed by the respondent no.1-workman in this petition.

7. After having heard the learned counsel for the parties and going

through the statement of claim, which the respondent no. 1-workman had submitted before the Industrial Tribunal, the written statement of the petitioner-management as well as the evidence adduced by the parties, I have come to the conclusion that in view of the fact that the respondent no. 1-workman was admittedly engaged as a Beldar on daily wage basis he could not have been regularized as Electric Motor Driver merely because he was asked to perform the duties of that post. Though it was pleaded in the statement of claim that he had been in fact promoted as Electric Motor Driver in May, 1977 but that plea taken by him is not acceptable considering the fact that there could be no promotion of a daily wager Beldar as of Electric Motor Driver in a government job. And if at all he had been so promoted, he would not have raised any dispute at all. In any case, it is not disputed that for appointment as Electric Motor Driver, a person desirous to be appointed to that post has to fulfill necessary eligibility criteria prescribed under the Rules meant for that post. The respondent no. 1-workman here had not even claimed that he was eligible to be appointed as Electric Motor Driver as per the relevant Rules.

8. As far as the plea of discrimination is concerned, that also cannot be accepted since in the statement of claim, it was not even pleaded by him that any Beldar who had been appointed on daily wage basis had been promoted as Electric Motor Driver without fulfilling the eligibility criteria. In the absence of any such averment in the statement of claim respondent no. 1-workman cannot take the plea of discrimination before this Court and similarly he cannot take any advantage from other Awards passed in cases of other workmen

because he had not based his claim on those Awards.

9. Learned counsel for the respondent no. 1-workman had during the course of hearing cited judgments of Hon'ble Supreme Court in *“Harjinder Singh Vs. Punjab State Warehousing Corporation”, (2010) 3 SCC 192*, *“Urban Improvement Trust, Bikaner Vs. Mohan Lal”, (2010) 1 SCC 12* and *“Basheshar Nath Vs. Commissioner of Income Tax, Delhi and Rajasthan and another”, AIR 1959 SCC 149* wherein in support of the submissions that a public authority, like the Municipal Corporation of Delhi, is not expected to discriminate against similarly situated employees. These judgments are of no avail to the respondents since his claim before the Industrial Tribunal was not based on the plea of discrimination. In these circumstances the Award of the learned Industrial Tribunal giving the relief of regularization to the respondent no.1-workman on the post of Electric Motor Driver is without any basis and so totally unsustainable.

10. I, therefore, allow this writ petition and set aside the impugned Award dated 16th March, 2001 passed by the Industrial Tribunal granting the relief of regularization to the respondent no. 1-workman as Electric Motor Driver.

P.K. BHASIN, J

FEBRUARY 29, 2012/pg