

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

% *Judgment Reserved on : February 11, 2013*
Judgment Pronounced on : February 13, 2013

+ **WP(C) 4672/2012**

RAM NIWAS Petitioner
Represented by: Ms.Manpreet Kaur, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI Respondent
Represented by: Ms.Maninder Acharya, Advocate
and Mr.Varun Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Initial appointment of the writ petitioner under the respondent was as a daily wage Driver. He joined on April 28, 1989. The engagement was extended from time to time. The respondent issued a policy circular on September 18, 1995 containing terms on which daily wage employees engaged during the period April 01, 1988 to March 31, 1990 would be regularized and in terms of the policy circular the petitioner submitted not only the requisite application but even an attestation form as per proforma prescribed. Column 11 of the attestation form required the petitioner to supply relevant information as per the particulars specified in said column, which reads as under:-

“Have you ever been arrested, any case pending against you, have you ever been detained, fined or ever been convicted by a Court of law or have you ever been

restrained from appearing in any examination by UPSC/University/Education organization.”

2. Submitting the application and the Attestation Form on January 19, 1996, the petitioner replied in the negative to the information sought in Column 11.

3. Regularizing the services of the petitioner the respondent thereafter issued a show-cause notice to the petitioner on July 22, 1997, which reads as under:-

*“Municipal Corporation of Delhi
(Central Establishment Department)
Town Hall, Delhi*

No.HC(B)-III/CED(C)/97/17869

Dated 22.07.1997

SHOW CAUSE NOTICE

Whereas Shri Ram Niwas S/o Shri Dharam Singh, D/W driver was engaged on 28th April 1989 in the Municipal Corporation of Delhi.

AND

Whereas while processing the matter relating to the regularization of service of the said Ram Niwas D/W driver, it was found that the said Shri Ram Niwas has deliberately and knowingly suppressed/concealed the facts, relating to his arrest in case No.70/84 u/s 325/34 IPC, P.S. Najafgarh, Delhi and 31/92 u/s 279/338 IPC, P.S. Karol Bagh, Delhi in the column No.11 of the Attestation Form.

AND

Whereas the matter was referred to the Competent Authority and it has been ordered to issue a show cause notice as to why the action under service regularizations should not be taken against him for such intentional and

deliberate suppression of material facts which can render him unsuitable for public employment.

Shri Ram Niwas is hereby given an opportunity to make such representation as he may wish to make against the proposal.

If, Shri Ram Niwas fails to submit his representation within 15 days of the receipt of this memorandum, it will be presumed that he has no representation to make and appropriate orders will be passed without any further notice.

The receipt of this notice should be acknowledged by Shri Ram Niwas.

*Sd/-
(J.S.SINDHU)
DIRECTOR (PERSONNEL)*

*Shri Ram Niwas
Desig. D/W Driver
Through : S.S./CSE/K.B.Zone”*

4. From a reading of the show cause notice, it is apparent that what was alleged against the petitioner was that he suppressed facts of he being arrested in FIR No.70/1984 for offences punishable under Section 325/34 IPC PS Najafgarh and FIR No.31/1992 for offences punishable under Section 279/338 IPC PS Karol Bagh.

5. The writ petitioner replied to the show cause notice by stating that the information sought in the column was : (a) Whether he was arrested in any case or a case was pending against him; (b) Has he been ever detained, fined or convicted by a Court of Law; and (c) Has he ever been restrained from appearing in any examination by UPSC, a University or an Educational Organization. He replied that he had correctly filled up the Attestation Form for the reason he had neither

been arrested nor was a case pending nor was he ever detained, fined or convicted by a Court of Law, nor was he restrained from appearing in any examination. With respect to FIR No.70/1984 he stated that on the basis of a false report he was accused of having committed an offence punishable under Section 325/34 IPC, but was acquitted by a Court of Law on December 02, 1993. As regards FIR No.31/1992 he stated that he was never arrested. He further intimated that the accident took place when he was driving the official vehicle and had made the entry of the vehicle being impounded by the police in the relevant log register. He also intimated that he stood acquitted even in said case. He highlighted specifically that the gravamen of the show cause notice was of suppressing the fact pertaining to he being arrested in the two FIRs. He highlighted that he was never arrested in the two FIRs.

6. Ignoring the fact that the show cause notice was limited to the allegation that the writ petitioner had suppressed relevant information pertaining to he being arrested in the two FIRs, and that the writ petitioner categorically replied that he never furnished any wrong information inasmuch as he was never arrested, in a mechanical manner, the Competent Authority passed an order terminating the writ petitioner's service on April 27, 1998.

7. The writ petitioner filed a writ petition in this Court challenging the order dated April 27, 1998 which was subsequently transferred to the Central Administrative Tribunal when a notification was issued as per which service disputes between the employees of the respondent were to be decided by the Central Administrative Tribunal. Registered as TA No.955/2009, the same was disposed of by the Tribunal on October 07, 2009 holding that there was no false information supplied nor was a relevant fact suppressed by the writ petitioner. It was highlighted that

the show cause notice alleged that the writ petitioner had supplied wrong information pertaining to his arrest in the two FIRs and that the fact was that the writ petitioner was never arrested in any FIR.

8. The decision of the Central Administrative Tribunal was challenged by the respondent in this Court by way of WP(C) 2417/2010 which was dismissed on July 27, 2010.

9. The order passed by this Court highlighted as aforesaid i.e. the show cause notice being limited only to the writ petitioner not informing of he being arrested in the two FIRs and that he was never arrested in the two FIRs and thus the charge of suppressing or concealing relevant information while filling up Column 11 of the Attestation Form was wrong.

10. The petitioner was permitted to re-join duties on June 09, 2010 pending disposal of WP(C) No.2417/2010 for the reason the respondent could not obtain a stay of the order passed by the Tribunal and after the writ petition filed by the respondent was dismissed, the question pertaining to the intervening period from April 27, 1998 till petitioner's reinstatement being treated as per the Fundamental Rules came up for decision by the Competent Authority, which took a decision that the writ petitioner would not be entitled to any salary or financial benefits during the intervening period.

11. This resulted in the writ petitioner re-approaching the Tribunal by and under OA No.2669/2011 in which he claimed salary for the entire intervening period on the strength of the plea that he was always ready and willing to work and that it was the Department which had prevented him from working on a wrong cause.

12. Vide impugned order dated April 02, 2012, noting the decisions reported as : (i) 2005 (2) SCC 363 Kendriya Vidyalaya Sangathan v.

S.C.Sharma; (ii) 2005 (5) SCC 591 G.M., Haryana Roadways v. Rudhan Singh; (iii) 2006 (1) SCC 479 U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey; (iv) 2006 (5) SCC 446 G.M. Tank v. State of Gujarat; (v) 2007 (2) SCC 433 J.K. Synthetics Ltd. v. K.P.Agrawal & Anr.; (vi) 2009 (2) SCC (L&S) 252 Basanti Prasad v. Chairman, Bihar School Examination Board & Ors.; and (vii) 2009 (2) SCC (L&S) 719 Metropolitan Transport Corporation v. V.Venkatesan, the Tribunal has opined that the writ petitioner would not be entitled to any wages in the interregnum period.

13. The writ petitioner is up in arms and this explains the instant writ petition before us.

14. The issue of wages for the period an employee is not permitted to work on account of a decision taken by an authority, upon the employee re-joining needs to be decided carefully by the Courts, for we find fair amount of cross-fertilization of opinions in various decisions, ignoring certain fundamental features. We highlight this cross fertilization with reference to the decisions noted by the Tribunal.

15. In Kendriya Vidyalaya Sangathan's case (supra) the Supreme Court highlighted that upon being reinstated in service, on the question of back wages, the Court has to consider whether or not the employee had an alternative employment or business, and if yes, what did he earn. It is logical to deduct said income received from the wages which the employee would have earned had he been in service, meaning thereby, the employee must plead the special facts in his knowledge pertaining to the employment during the interregnum period. In the decisions in Rudhan Singh's case (supra), Uday Narain Pandey's case (supra) and K.P.Agrawal's case (supra), the Supreme Court held that issues of services being terminated in violation of Section 25F of the I.D.Act

1947 in the context of back wages warranted the Court to take into account the service rendered till when the termination took place; with lesser service rendered justifying no back wages or partial back wages and lengthy service rendered justifying full back wages. In G.M.Tank's case (supra) and Basanti Prasad's case (supra), where dismissal from service was on account of being convicted at a criminal trial and reinstatement was on account of acquittal in appeal, the Supreme Court held no back wages to be paid for the reason the termination of service remained valid till the employee was acquitted in appeal.

16. Regretfully we note that the Tribunal has mechanically reproduced paragraphs from the decisions afore-noted of the Supreme Court without culling out the law. It is trite that the subject dealt with in the afore-noted decisions of the Supreme Court pertains to judicial discretion being guided and thus it is the duty of all Courts and Tribunals to guide their discretion by carefully analyzing the decisions of the Supreme Court on the subject. It is useless to cite decisions where termination is on account of conviction followed by reinstatement upon being acquitted in appeal in cases where termination is on account of disciplinary action taken and vice-versa. We hope and expect that in future the Tribunal would not parrot, like nursery rhymes, passages from judicial decisions, but would apply them after understanding the law declared.

17. Returning to the facts we find that petitioner Ram Niwas had been engaged as a daily wager on April 28, 1989 and was regularized in the year 1995 and at that time he filled up the enrolment form. He was dismissed from service on a wrong charge of suppressing a fact on April 27, 1998 and unfortunately for both parties, the blame lies in this Court which could not decide the writ petition filed by the petitioner even till

the year 2009 when it was transferred to the Tribunal and was allowed on October 07, 2009. Had the writ petition being decided expeditiously neither party would have suffered. But, the docket explosion in this Court prevents early adjudication of claims.

18. Let us note the facts favourable to the petitioner and those in favour of the respondent. The first fact favourable to the petitioner is that the Competent Authority of the respondent passed a mindless order ignoring that the gravamen of the show cause notice was the writ petitioner suppressing the fact of his being arrested in the two FIRs and in spite of he categorically informing that he was never arrested in any FIR, and notwithstanding that as a matter of fact also he was never arrested, order dated April 27, 1998 was passed. Thereafter, 11 years got consumed for no fault of either party when writ petition filed by the writ petitioner challenging the order dated April 27, 1998 remained pending till it was disposed of on October 07, 2009. For the next period fault lies with the respondent which did not challenge the decision of the Tribunal within time and filed a belated writ petition in July 2010 but before that reinstated the writ petitioner. The fact favourable to the respondent would be that the petitioner had rendered service as a daily wager for a little over six years when he was dismissed from service. The other fact favourable to the respondent is non-disclosure of the particulars of his employment by the petitioner during the interregnum period.

19. We take judicial notice of the fact that of all the skilled and semi-skilled trades the most easily available employment is that of drivers and simultaneously note the fact that privately engaged drivers receive half the salary which are received by drivers in government service.

20. Keeping in view the judicially noted facts by us in para 19 as also the fact that the petitioner had served for a little more than 6 years when his services were wrongfully terminated we are of the opinion that for the period post April 27, 1998 till he was reinstated in service on June 09, 2010 the petitioner would be entitled to 25% wages which he would have received as a driver.

21. The writ petition and the original application filed by the petitioner stands disposed of directing the respondent to pay 25% wages to the petitioner for the period in question. The payment would be made within 12 weeks from today.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 13, 2013
dk