

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

Decided on March 25, 2014

+ **W.P.(C) 4486/2001**

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Represented by: Ms. Amita Gupta, Advocate with
Mr.Ramakant Tripathi, Advocate

versus

SH. VED PRAKASH AND ANR.

..... Respondents

Represented by: Mr.Pramod Gupta, Advocate with
Mr.Umakant Kataria, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

CM No. 17232/2013 (for restoration)

This is an application filed by the petitioner-Municipal Corporation of Delhi seeking restoration of the writ petition, which was dismissed in default on October 07, 2013.

For the reasons stated in the application, the application is allowed. The writ petition is restored to its original number.

W.P.(C) 4486/2001

1. The challenge by the Municipal Corporation of Delhi in this petition is to the award of the Industrial Tribunal dated May 11, 2000 passed in I.D. No. 758/1990 whereby the Industrial Tribunal has held that the respondent is entitled to be regularized as Wireman Grade-I in the pay scale of Rs. 260-400/- with effect from April 01, 1978, revised from time to time.

2. I may note that the respondent has since expired. No steps have been taken by the petitioner to bring the legal representatives of the deceased-workman (respondent) on record. The writ petition to that extent stands abated.

3. In any case, I deem it appropriate to consider the writ petition on merit and proceed to do so.

4. The brief facts are, it was the case of the respondent that he was appointed by the petitioner as a 'Beldar' on daily wage basis on April 24, 1970. According to him, the petitioner promoted him as Electric Motor Driver on daily wages in 1971. The respondent was further promoted to Wireman Grade-I in 1974. He was paid salary of Wireman Grade-I from 1974 to 1978. It is his case that with effect from April 01, 1978, the petitioner, instead of regularising the respondent as Wireman Grade I in the pay scale of Rs. 260-400/-, has regularised him as Beldar in the pay scale of Rs. 196-232/-, which is illegal. It is this conclusion for which an Industrial Dispute was raised by the respondent.

3. The case of the petitioner on merit was that in terms of the judgment of this Court dated February 04, 1987 in W.P.(C) 1373/1980, an employee is entitled to be made permanent on the post/designation on which, he initially worked.

4. Three issues were framed by the Industrial Tribunal; the first one, 'whether Union has locus standi', the second being, 'whether there is espousal' and the third being, 'as per the terms of reference'.

5. The issues No. 1 and 2 have been decided in favour of the respondent. Insofar as the issue No. 3 on merit is concerned, which was an issue in terms of the reference. It was the conclusion of the Industrial Tribunal on the basis of the testimony of Management Witness No. 1,

who admitted that 39 persons were regularised by the petitioner on the post they were working, that the respondent is entitled to be regularised in the pay scale of Rs. 260-400/- with effect from April 01, 1978.

6. Ms.Amita Gupta, learned counsel appearing for the petitioner would submit that there is no admission on the part of the then Executive Engineer Mr.A.R.Chugh. According to her, the Industrial Tribunal could not have granted a higher post to the respondent without ascertaining as to whether there are vacancies and the respondent fulfils the qualification for the said post. She would state that the respondent has since retired and he is getting pension as a Beldar.

7. On the other hand, Mr.Pramod Gupta, learned counsel appearing for the respondent would submit that the present petition is an abuse of process of law inasmuch as the respondent is very selective in challenging similar orders passed by the Industrial Tribunal. According to him, this Court initially decided a writ petition being W.P.(C) 1373/1980 on February 04, 1987 wherein this Court has held that muster roll employees would be entitled to the regularization on point to point basis and on the posts they are working. Based on the said judgment, the respondent was regularized; unfortunately, not on the post of Wireman Grade-I, but on a lower post of Beldar. According to him, it is this action of the petitioner, which has been challenged by the respondent by raising an Industrial Dispute. He would state that similar orders of the Industrial Tribunal have been implemented by the petitioner. Surprisingly, the award in this case has been challenged by way of this writ petition. He also draws my attention to the reply to the claim petition filed by the petitioner. He points out to the reply to the claim petition on merit to para 3, which is reproduced as under:

“3. That the contents of para 4 is also admitted to the extent that the workman worked as Wireman Grade-I on daily wages w.e.f. 1974 to and worked upto 1978”.

8. According to him, the petitioner themselves have admitted the fact that the respondent was working as a Wireman Grade-I between 1974 to 1978 and there is no reason why the judgment of this Court in W.P.(C) 1373/1980 should not be made applicable in his case as well. He has also drawn my attention to the orders dated April 26, 1988, March 07, 1989, December 23, 1991, October 06, 1994 and June 26, 1995 (Annexure R-6 at pages 96 to 71 of this petition) to contend that the petitioner has regularized Beldars on a higher post of W.M.-Grade I with effect from 01.04.1978 even though the posts held by them was on Muster Roll.

9. Having considered the submissions made by the counsel for the parties, I note that this Court, while deciding W.P.(C) No. 1373/1980 on February 04, 1987, held as under:

“In the present writ petition, therefore, without quashing the decision of the respondent-Corporation of regularising the muster roll employees on point to point basis, I issue a writ of mandamus directing the respondent-Corporation to first consider the petitioners for promotion, if they are so eligible, to the next hither posts before they make recruitment to those posts on point to point basis from amongst the muster roll employees. I further direct the respondent-Corporation that, if need be, it should create supernumerary posts so as to accommodate the promotees. It is further directed that the persons so promoted from amongst the petitioners will rank senior to the persons who are inducted, on point to point basis, from amongst the muster roll employees. The consideration for promotion from amongst the petitioners must be on that date (s) as on which date (s) the muster roll employees are sought to be

regularised in various posts”.

10. That apart, a subsequent writ petition being C.W.P. No. 2976/2003 filed by the Municipal Corporation of Delhi challenging the award of the Industrial Tribunal and decided on November 30, 2005 has been dismissed by the learned Single Judge of this court with the following observation:

“11. At this stage, it would be appropriate to also consider the submission made on behalf of the respondent/workman to the effect that other than the petitioner, large number of Awards were made in identical circumstances in favour of different muster roll employees whereby the MCD was directed to effect point to point promotion in terms of the order passed by this court. It has been stated that the MCD has duly regularised the concerned workman. These orders were exhibited before the Labour Court and have been considered in the impugned Award. Inter alia, pursuant to industrial awards, an order dated 12th May, 1995 was passed whereby the services of one Shri Chhagan Lal were regularised on 16th July, 1996; Order dated 28th April, 1995, Shri Om Parkash, Beldar was regularised as lift operator; order dated 26th February, 1997 whereby Shri Subhash Chand and Chagan Lal were regularised as lift operators, have been brought to the notice of this court.

Several other such orders have been relied upon on behalf of the petitioner”.

11. I note, in the impugned award, the Industrial Tribunal on issue No. 3 has held as under:

“10. As per the terms of reference, it is required to be determined, “if the workman is entitled to be regularised as Wireman Grade-I in the proper pay scale, and if so to what relief is he entitled and what directions are necessary in this respect.

In order to substantiate his claim, the workman in his deposition by way of affidavit Ex.WW1/A has stated that he was appointed as beldar on daily wages by the management on 24.7.1970; that he was promoted as electric motor driver on daily wages in 1971 on which post he worked till 1973 and was paid salary accordingly; that in 1974, he was promoted as Wireman Grade-I on daily wages in 1974 and from 1974 till 1978, he kept on working on the said post and was paid his salary for the said post; that on 1.4.1978, instead of regularising the workman on the post of Wireman, in the pay scale of Rs. 260-400, he was regularised on the post of mason in the pay scale of Rs. 196-232 while other employees were regularized by the management on the same very posts on which they were working; that even after the decision by the Hon'ble High Court in Writ Petition no. 1373/80 decided on 4.2.1987, Shri Phool Singh who was appointed as Chowkidar on daily wages on 31-1-78, was regularized as lift operator on 1-4-1982, who is still working as lift operator in Hindu Rao Hospital; and that he should be ordered to be regularised as Wireman Grade-I in the pay scale of Rs. 260-400 since 1974. Workman has proved on record copy of office order dated 12-7-1982, whereby the scale of pay of Wireman Grade-I, considering him to be a skilled worker, was revised from Rs. 260-350 to Rs.260-400 w.e.f. 1.1.1973, which fact is further evidence from Ex.WW2/6 copy of pay scale of CPWD Edition, 1972, which states that the post of Wireman mentioned at serial No. 59 is skilled, carrying the pay scale of Rs. 110-155. Ex.WW2/5 which is copy of extract of IV Pay Commission report shows Wireman Gr-I at serial No. 417, carrying pay scale of Rs.260-350 revised to Rs.950-1400. Ex.WW2/13 is copy of the judgment dated 4-2-1987, passed by Hon'ble Delhi High Court in civil writ petition No. 1373 of 1980, titled Lalit Mohan & Ors. Vs. MCD. At the time of arguments, Shri S.K.Kalia, learned AR of the

workman tendered copy of the award passed by this Tribunal in I.D. No. 771/90, between MCD and its workmen. The management has not disputed the correctness or authenticity of the aforesaid documents proved on record by the workman.

11. MW-1 Shri A.R.Chugh has also admitted in his cross examination that the workman since the year 1971 to 1978 has worked as electric motor driver and wireman Grade-I on muster roll and further the workman was working as Wireman Grade-I on muster roll when he was regularised in 1978. He has further admitted that according to the decision of the Hon'ble Delhi High Court, in writ petition No. 1373/80, 39 persons were regularised to the post they were working. He expressed his ignorance if Sarv/Shri Chagan Lal, Subhash Chand and Om Parkash were appointed as beldars on daily wages in 1978. He, however, admitted that Chagan Lal and Subhash Chand were regularised as lift operators with effect from 1.4.1988 and volunteered to add that they had surrendered their seniority prior to engagement as lift operators on muster roll.

12. Reliance has been placed by the workman on the judgment rendered by the Hon'ble Supreme Court in Jeet Singh and Others Vs. MCD & Ors., reported as AIR 1987 Supreme Court 1781. Ld. AR of the workman has submitted that the workman is entitled to be paid salary and allowances as are payable to regular Wireman Grade-I on the principle of equal pay for equal work.

13. From the documents proved on record and the testimony of the parties as discussed above, it is fully established that the post of Wireman Grade-I is skilled category, which post carries the pay scale of Rs. 260-400 w.e.f. 1.1.1973. The workman, no doubt, joined as a beldar on daily wages with the management in the year 1971, but

admittedly, he has been working as a wireman since the year 1974 onwards on muster roll as admitted by MW-1. Shri A.R.Chugh, Executive Engineer, who has further admitted that as per decision of Hon'ble Delhi High Court in Writ Petition No. 1373/80, 39 persons had been regularized by the management to the post they were working. Admittedly, workman has been regularised as beldar and not as wireman with effect from 1.4.1978 in pay-scale of Rs. 196-232, whereas he was entitled to pay scale of Rs. 260-400". He raised the demand, only on 28-4-89, vide notice Ex.WW2/12. Thus, the workman could claim pay scale as demanded by him only with effect from the date of notice of demand. However, keeping in view the law as laid down in the following judgments, I find that if not from the date he worked as a Wireman Grade-I in 1974, the workman should have been given pay scale of Wireman as revised from time to time with effect from the date of his regularization, i.e. 1.4.1978".

12. From a perusal of the aforesaid conclusion of the Industrial Tribunal, it is noted that the Industrial Tribunal has relied upon the oral testimony of the Management Witness No. 1 Mr. A.R.Chugh wherein he has categorically admitted that the respondent was working as a Wireman Grade-I on muster roll when he was regularised in 1978.

13. In view of the aforesaid finding of fact based on the admission on the part of the Management Witness, I do not see any reason to interfere with the impugned award of the Industrial Tribunal.

14. I quote for benefit, the conclusion of the learned Single Judge of this Court in C.W.P. No. 2976/2003 decided on November 30, 2005 wherein in para 13, it was held as under:

"13. I find that the challenge to the Award is based on a re-appreciation of the factual situation as if the present writ petition is an appeal against the Award passed by

the Industrial Adjudicator. It is settled law that findings of fact recorded by a fact finding authority constituted for such purpose cannot be discharged for the mere reason and having been based on materials or evidence which, according to the petitioner, were not sufficient or credible in its own to warrant such findings. In the instant case, findings of the Industrial Adjudicator were based on evidence, both oral and documentary, the same cannot be faulted on any legally tenable ground. In this behalf, a reference may be made to the pronouncement of the Apex Court in AIR 200 SC 1508 entitled Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union & Another in which it was held thus:-

“The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had

overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below”.

15. In view of the above, I find no merit in the writ petition. The same is dismissed.

16. No costs.

(V.KAMESWAR RAO)
JUDGE

MARCH 25, 2014

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