

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

Judgment Reserved on February 20, 2014

Judgment Delivered on February 24, 2014

+ **W.P.(C) 2162/2011**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Represented by: Ms. Manpreet Kaur, Advocate

versus

FATEH SINGH Respondent

Represented by: Mr.Nirmal Mishra, Mr. Chaman
Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition by the New Delhi Municipal Council is to the award dated August 01, 2009 passed in I.D. No. 332/09 by the Labour Court whereby the Labour Court has held that the termination of the respondent is in violation of Section 25-F of the Industrial Disputes Act, 1947 (Act, in short) and directed his reinstatement without any back wages.

2. The brief facts are, it was the case of the respondent that he was in the employment of the petitioner w.e.f. April 01, 1982 as 'Maali' on daily wage basis. According to him, the petitioner employed persons as Maali on permanent basis and paid them about ₹ 1700/- per month as salary but, he was being paid ₹ 700/- per month. He would further state that the petitioner had terminated his services on the ground of misbehaviour without issuing any memo or charge sheet on July 23,

1992. He would further state that the juniors to him were retained by the Management though the services of the workman were terminated in violation of Section 25-F, 25-G and 25-H of the Act.

3. The case of the petitioner before the Labour Court was that the respondent was a Muster Roll Mazdoor and lastly working at Circular Road, New Delhi and was paid the salary for the period he has worked. They justified their action.

4. Only one issue, in terms of the reference, was framed by the Labour Court. The respondent examined one Mahesh Kumar (WW2), who had deposed that on October 14, 1991, some quarrel took place between Ram Kishore, Saisar Pal, Vasudev. He would state that the respondent had no role to play in the quarrel and the FIR which was filed by Vasudev Chaudhary, the name of the respondent did not feature. In fact, Constable from P.S. Chanakya Puri also appeared as WW3 to depose that no FIR was lodged against the respondent. On behalf of the petitioner, Krishan Pal, Assistant Director (Horticulture) has tendered his evidence by way of an affidavit. I note that the termination order dated July 21, 1992 reads as under:

“The Chief Vigilance Officer, NDMC vide his order dated 30.05.92 has ordered that the services of the following four Muster Roll workers of the Horticulture Department may be terminated with immediate effect for misbehaving and assaulting Sh. Vasudev S/o Sh. Bhule Ram Chaudhry, Hort. Deptt. As per orders of the CVO these persons are not to be reemployed in NDMC:

1. *Sh. Basudev S/o Sh. Bilu Ram*
2. *Sh. Ram Kishore S/o Sh. Mam Chand*
3. *Sh. Saisar Pal S/o Sh. Thandu Singh*
4. *Sh. Fateh Singh S/o Sh. Dharam Pal*

Chief Engineer (Civil) is requested to take necessary action under intimation to the Vigilance Deptt”.

5. The Labour Court was of the view that even if the termination order is not stigmatic, but simpliciter, then also the provisions of Section 25-F of the Act were to be complied with, which has not been done.

6. The learned counsel for the petitioner would argue that the respondent was involved in a manhandling Vasudev Chaudhary. She would also state, a preliminary enquiry was conducted wherein it has come on record that the respondent was also involved. She also relied upon a Judgment of this Court dated February 11, 2000 in Civil Writ Petition No. 2751/1992 decided by this Court on February 11, 2000, which was filed by Saisar Pal, challenging his termination. According to her, this Court has upheld the termination. She had also drawn my attention to an additional affidavit filed by the petitioner wherein the following was mentioned, to justify the impugned action against the respondent:

“An additional affidavit has been filed by the respondents sworn in by one Smt. Renu Sharma, Secretary, NDMC wherein she has testified that it was reported by Shri Vasudev Chaudhary at Kushak Nala on 4.10.1991 at 9.30 A.M. regarding

the man-handling by some few muster roll workers; that accordingly, a preliminary investigation was carried out by Shri K.P. Singh, Section Officer (Horticulture) and Deputy Director (Horticulture); that on reaching the site, it was found that Vasudev Chaudhary was bleeding; that an enquiry was conducted and all the four persons involved in the said man-handling and misbehaviour were examined; that the said four persons who were involved in man-handling and misbehaviour were the petitioner. S/Shri Ram Kishore, Vasudeo and Fateh Singh; that the statements of the said persons were taken in their hand writing; that after careful examination and keeping in view the facts and circumstances, the evidence and the statements of the said persons, the abovestated two officials reached on a conclusion that the said four persons have man-handled Sh. Basudeo Chaudhary and attacked him with 'Patti' and that the four persons involved were given full opportunity to express themselves”

7. According to her, the charge is of a serious nature and the Tribunal has erred in setting aside the termination. During the course of the submissions, on a specific query to the learned counsel for the petitioner whether the report of the preliminary enquiry as conducted by the petitioner, was produced before the Labour Court, the answer was in the

negative. She would state that the order of this Court dated February 11, 2000 in Civil Writ Petition No. 2751/1992 was produced before the Labour Court, still, the Labour Court has not upheld the termination.

8. On the other hand, the learned counsel for the respondent would justify the conclusion arrived at by the Tribunal. He would state, even if the termination of the respondent vide order dated July 23, 1992 was a termination simpliciter, still, the petitioner was required to follow the provisions of Section 25-F of the Act.

9. Having considered the submissions of the learned counsel for the parties, it is a case where the respondent was not named in the FIR lodged by Vasudev Chaudhary. This aspect has been confirmed by the constable who had appeared as WW3. It may be a matter of record that the preliminary enquiry was conducted by the petitioner, wherein the statement of the respondent had been recorded, but, regrettably, the same was not proved before the Labour Court as the same was not produced. No reliance can be placed by the petitioner on the preliminary enquiry. Further, insofar as the reliance placed on the Judgment of this Court in Civil Writ Petition No. 2751/1992 is concerned, the same would not help the petitioner inasmuch as the affidavit which has been filed in the writ petition, was not put to the respondent. The respondent was not a party in those proceedings. The contents of the affidavit cannot be read against the respondent. Further, I find from the deposition of the respondent, he denied the suggestion that he misbehaved and assaulted Vasudev Chaudhary. He also denied the fact that the Vigilance Department had found him guilty. Rather, on the other hand, the MW1 admitted that the

management had not received any complaint against the respondent. At the same time, he denied the suggestion that Fateh Singh was not involved in the said incident.

10. Suffice to say, insofar as the aspect of misbehaviour by the respondent is concerned, the same has not been proved by the petitioner. A perusal of the order of termination dated July 21, 1992, it is clear that the termination was effected on the ground of misbehaviour. The order is punitive. It cast stigma on the respondent. The termination could not be effected, without giving a proper opportunity to the respondent and proving the same before the Labour Court. The Supreme Court in the case reported as (2010) 8 SCC 220, Union of India and Others Vs. Mahaveer C. Singhvi in Para 45 held as under:

“45. Since the High Court has gone into the matter in depth after perusing the relevant records and the learned Additional Solicitor General has not been able to persuade us to take a different view, we see no reason to interfere with the Judgment and order of the High Court impugned in the special leave petition. Not only is it clear from the materials on record, but even in their pleadings the petitioners have themselves admitted that the Order of 13-6-2002, had been issued on account of the respondent’s misconduct and that misconduct was the very basis of the said order. That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a

punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also apply to the respondent's case''.

11. The alleged misbehaviour having not proved, coupled with the fact that even Section 25-F of the Act was not followed, for the reason given by the Tribunal and for the additional reason, that alleged misbehaviour is the basis for termination, the order of the Labour Court need to be upheld. I do not see any merit in the writ petition. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 24, 2014
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