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

Judgment delivered on: November 25, 2014

+ **W.P.(C) Nos. 7015, 7048, 7129, 7185 and 7208 of 2013**

DINA NATH Petitioner
in W.P.(C) No. 7015/2013

NARESH KUMAR Petitioner
in W.P.(C) No. 7048/2013

KAMLA DEVI Petitioner
in W.P.(C) No. 7129/2013

BHARAT PASWAN Petitioner
in W.P.(C) No. 7185/2013

VED PRAKASH Petitioner
in W.P.(C) No. 7208/2013

Represented by: Mr.Anukul Chandra Pradhan,
Senior Advocate with
Mr. Kamal Baid and Mr. Rahul
Baid, Advocates.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Represented by: Ms.Mini Pushkarna, Standing
Counsel, Ms. Yoothica Pallavi
and Ms. Namrata Mukim,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide these petitions, the petitioners seek to set aside the award dated 27.07.2013 passed by the learned Tribunal, whereby a sum of Rs.50,000/- each was granted in favour of the petitioners/workman in lieu of reinstatement and back wages.

2. Issue in these petitions is same; therefore, this Court has decided to dispose of all the petitions together by this common judgment.

3. Brief facts of the case are that the workmen/claimants were working with the Education Department of the respondent Management/Municipal Corporation of Delhi (for short 'MCD') on daily wages as Class IV employees, like Chowkidars, Attendants etc. Their appointments were made against the vacant/sanctioned/ regular cadre under the MCD. The respective appointments of the claimants were for a period of 30 days, but the tenure of their services has been extended from time to time since their initial appointment. The petitioners/workmen had put more than 240 days in service in one calendar year. The posts in question are still to be filled on regular basis and till date they were working on the said posts on daily wages basis.

4. Mr.Anukul Chandra Pradhan, learned senior counsel appearing on behalf of the petitioners/workmen has submitted that the petitioners had a right to be considered for the regular appointment to the

respective posts. However, the respondent Management without justifiable reason initiated the process of termination of services of the petitioners and appointing other persons to the posts in question on daily wages basis. The respondent Management has not initiated the process of filling the posts in question on a regular basis, however, replaced the petitioners with other persons on daily wages basis.

5. Mr. Pradhan submitted that the said action of the respondent Management was unjustified; and untenable in the eyes of law in as much as persons working on daily wages cannot be replaced by another person on daily wages. Hence, the claimants are entitled to continue with their services on daily wages and also entitled for regularization of their services. However, they have been thrown out from the service though they were discharging their duties with due diligence and devotion.

6. To adjudicate the claim of the petitioners, the Labour Court framed the following issues:-

- “1. Whether there is relationship of workmen and employer between the parties?*
- 2. Whether the workmen are entitled to reinstatement with consequential benefits?*
- 3. Relief.”*

7. Mr. Pradhan, learned senior counsel for the petitioners submitted that issues No. 1 and 2 have been decided by the Labour Court in favour of the petitioners/workmen and against the respondent Management. The petitioners do not dispute the findings given on

issue No.1, however, dispute the opinion of the Labour Court on issue No.2 in these petitions.

8. The petitioners/workmen claimed before the learned Tribunal that the respondent Management be directed to reinstate them in service along with full back wages, continuity of service and all consequential benefits, monetary as well as non-monetary and declare the termination of services of the petitioners *void-ab-initio*. Consequently, they may be continued in service of the respondent Management.

9. To establish their claim, the petitioners/workmen examined themselves and during cross-examination, they stated that they came to know about the vacancies through the Employment Exchange, however, they did not bring the Employment Exchange Card. They had not got any letter issued by the Employment Exchange about the vacancies. Also admitted, no interview letters were issued to them before their appointments.

10. Learned counsel submitted that on the other hand, respondent Management examined MW1 Chhattar Singh, who stated that the claimants were appointed on daily wages and their appointment letters were found to be forged and fabricated as the same were never been issued by the respondent Management.

11. Learned counsel submitted that in para 26 of the impugned award, the Labour Court recorded as under:-

“26. From the perusal of the record and the depositions of the witnesses, it is revealed that before terminating the service of the workmen, there is no show cause notice/chargesheet or departmental enquiry was conducted though the workmen were working as a daily wagers and they have spent in the service of the management for more than two years. It is also revealed from the documents placed by the management that they workmen had having the clean antecedents during the entire period of their service and there was no complaint what so ever against them.”

12. Accordingly, the Labour Court opined that the petitioners were engaged as a daily wagers and they had worked to the satisfaction of the respondent Management. The Management failed to detect the forgery in the appointment letters by oral and documentary evidence. The official from the Screening Committee never come forward to depose before the Labour Court as to what kind of forgery was committed. The Management failed to get the real culprits, who were alleged to have been involved in commission of crime while screening the appointment letters of 105 workers with the Management. Neither the verification report has been proved in accordance with law of evidence nor the verified appointment letters placed on record. During the course of evidence, it is also revealed that the Employment Exchange sponsored the names of the workers as a daily wagers. But the requisite record from the Employment Exchange was not summoned nor any official from the Employment Exchange appeared and deposed in this regard.

13. The learned Tribunal further recorded that neither any domestic enquiry was conducted nor any show cause notice was issued or no

explanation has been called from the workmen with regard to alleged act of the Management while terminating the services of the petitioners/workmen. Thus, it is proved that the petitioners were terminated without following the principles of natural justice. Moreover, neither the interrogation of the petitioners/workmen was done by the local police nor they were called to join the investigation. The FIR lodged with respect to the forgery regarding appointment letters did not depict the names of the workmen either in Column No. 2 or in Column No. 3 as accused therein.

14. Learned senior counsel further submitted that MW1 Chhattar Singh in his cross-examination admitted that out of 105 workmen, as per list Ex. MW1/1, three of them have been taken back on duty and have been regularized.

15. Despite the facts and evidence established in favour of the petitioners, the Labour Court has granted Rs.50,000/- each only as compensation in lieu of reinstatement and back wages without any rhyme and reason. Hence, vide these petitions, it is prayed that the respondent Management may be directed to reinstate the petitioners with full back wages alongwith all consequential benefits.

16. On the other hand, Ms. Mini Pushkarna, learned standing counsel for respondent MCD submitted that the petitioners were working on daily wages as Class IV employees, i.e., Chowkidars, Attendants etc. The workman 105 in number including the petitioners procured fake appointment letters. To this effect, an enquiry was conducted by the higher officers of the respondent Management and

during the course of investigation, it was found that the engagement letters have been issued under the signatures of the following officers:-

1. Shri T.S. Malik, AEO
2. Smt. Savita Rani, AEO
3. Shri Chet Ram Kaushik, AEO
4. Smt. Bhagyawanti Sehrawat, DEO
5. Shri B.C. Narula, DEO
6. Shri Mushaqqat Hussain, A.I.
7. Shri M.A. Khan, Suptd.

17. Learned counsel submitted that during the meeting on a particular date, all the above mentioned officers, under whose signatures the engagement orders were issued as well as the Zonal DEOs were called together and Zone wise original engagement letters were shown to the officers to verify their signatures.

18. Ms.Pushkarna submitted that the petitioners/workmen examined themselves and stated that the petitioners came to know about the vacancies with the Management through some source. They did not receive any call letter for appearing in the interview. The workmen did not remember who had appointed them in the employment of the respondent Management. They did not have the copy of the appointment letters upon which they were relying. It is further admitted that their services were dismissed along with other employees

on the basis of report of the Screening Committee. Their names were existed in the report Ex. MW1/4. The termination was challenged before this Court and the petitioners were directed to appear before the Additional Commissioner along with original appointment letters and other original documents relied on.

19. Learned counsel for the respondent Management has drawn the attention of this Court to the award passed by the learned Tribunal in I.D. No.100/07 in case of ***Mukesh Kumar Bhardwaj Vs. Municipal Corporation of Delhi***, decided on 22.09.2010, one of the workmen who were dismissed on the basis of same analysis.

20. In the aforementioned case, the learned Tribunal vide award dated 22.09.2010, recorded as under:-

“ AR for management has attacked the appointment of workman as fake appointment. It is stated by AR for management the appointment of the workman was the fake appointment in the MCD. The MCD has conducted the enquiry and whenever fake appointment was found dispensed the services of those who joined on fake appointment letter. It is further stated by AR for management that on the basis of fake appointment letter, the workman joined at M.C. Primary School, Sangam Park-I, Civil Line, Delhi. An enquiry was conducted by the screening committee and after investigation selection screening committee found that in 105 cases signatures of the competent authority on the engagement letters were forged one and not of the concerned DEO/AEO. In the enquiry, it was found that the workman is one of those 105 persons in which engagement was gained on the basis of forge and fabricated engagements. The appointment on the basis of forge and fabricated

appointment letter is more serious than the arbitrary and irregular appointment.

(v) It is proved that the workman was engaged by fake appointment letter on Rest Reliever post. Even on the date of the alleged appointment the workman had crossed the age limit for the appointment. In Govt. services no appointment can be made beyond the age limit and on the date of appointment the workman had crossed the age limit.

Accordingly, it is held that the question of termination does not arise since the appointment was based on forged and fabricated documents. It is also held that the workman was not eligible for the said post since when he joined the management he was of more than 30 years of age and according to age limit in Govt. services, he had already crossed the age. Hence, workman is not entitled for any relief. Award is passed in negative.”

21. Learned counsel further submitted that the aforesaid Tribunal rejected the claim of the petitioners/claimants therein, however, in the claims filed by the present petitioners, the learned Tribunal though held that the termination was illegal being without following the principles of natural justice, however, having discretion not directed their reinstatement in service but granted Rs.50,000/- each as compensation in lieu of reinstatement and back wages.

22. Being aggrieved by the aforementioned award dated 22.09.2010, the above named claimant Mukesh Kumar Bhardwaj, challenged the same before this Court vide W.P.(C) No. 203/2011, wherein the Coordinate Bench of this Court vide its judgment dated 11.05.2011 held that:-

“12. The counsel for the petitioner has next argued that the finding of the Industrial Adjudicator is perverse. I have perused the evidence by way of Examination-in-Chief and the Cross-Examination of the petitioner and of the witnesses of the respondent MCD. In fact the said evidence reveals that a proper inquiry was conducted qua 105 employees, detected by the Screening Committee to have been appointed on the basis of forged documents and it was on the basis thereof only that the action was taken. It is also borne out that an FIR in this regard was also lodged and prosecution is underway.

13. The counsel for the petitioner has urged that the onus was on the respondent MCD to prove forgery and fabrication and which has not been done and thus the finding of the Industrial Adjudicator is perverse. In my view, the onus of proving that the documents of appointment were genuine and bona fide was on the petitioner, respondent MCD could not have been called upon to prove in the negative. It was for the petitioner to prove that the documents on the basis whereof he claimed appointment, were issued by the competent officers of the respondent MCD and in the normal course of the performance of their duties. Nothing of the sort has been proved by the petitioner.

14. The delay of 8 years on the part of the petitioner in raising the dispute is also in my opinion fatal to the case and sufficient for this Court to on this ground alone refuse to exercise jurisdiction. The petitioner, when the matter appears to have been hot, chose to lie low and is found to have raised the dispute only by way of wager. It is settled position in law that the delay in raising the dispute is sufficient for this Court to refuse to exercise discretion in the matter.”

23. Ms.Pushkarna, learned counsel further submitted that the petitioners were dismissed from the service in the year 2000 and they raised the industrial dispute in the year 2006. Since the petitioners

were aware about their act of forgery, they were satisfied with the termination order; therefore, they did not challenge the same for six years. Further submitted that this issue was raised by the respondent before the learned Tribunal in para 1 under the head ‘preliminary objections’ in the written statement filed by the respondent Management. In view of the above facts, petitioners’ act of challenging the same in the year 2006, i.e., after six years is an afterthought. Hence, while granting compensation of Rs.50,000/- each in favour of the petitioners/workmen in lieu of reinstatement and back wages, the learned Tribunal considered this fact also.

24. Learned counsel submitted that it is the discretion of the Tribunal to grant reinstatement with full back wages or to grant compensation without reinstatement and back wages.

25. On this issue, learned counsel for the respondent Management has relied upon a case of ***Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. & Anr. Vs. Shri S.C. Pandey, (2006) 2 SCC 716***, wherein the Apex Court held that:-

“13. The question raised in this appeal is now covered by a decision of this Court in M.P. Housing Board and Anr. v. Manoj Srivastava civil Appeal arising out of SLP (Civil) No. 27360/04 disposed of this date] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) A daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed

thereunder and in that view of the matter he does not derive any legal right; (3) Only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularized in service; (4) If an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.”

26. Learned counsel submitted that the relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merits. Every workman is not entitled to get something only because it would be lawful to do so. If that principle is applied, the findings of the Industrial Court shall have no significance.

27. To strengthen her arguments, learned counsel for the respondent has relied upon a case of ***Haryana State Electronics Development Corporation Ltd. Vs. Mamni***, (2006) 9 SCC 434, wherein the Apex Court held that:-

“10. We, therefore, are of the view that in the peculiar facts and circumstances of this case, interests of justice would be sub-served if in the place of reinstatement with back wages, a lump sum amount is directed to be paid by way of compensation. This order is being passed keeping in view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up. It is wholly unlikely that respondent in the meantime had not been working anywhere else, since the respondent had not placed any material on record to show that she had not been working.”

28. Learned counsel further submitted that in case of ***Mamni*** (*supra*), compensation of Rs.30,000/- was granted in lieu of

reinstatement whereas in the present case a sum of Rs.50,000/- has been granted in lieu of reinstatement and back wages.

29. I have heard learned counsel for the parties.

30. The petitioners/workmen were working with the Education Department of the respondent Management on daily wages as Class IV employees, like Chowkidars, Attendants etc. Their appointments were made against the vacant/sanctioned/ regular cadre under the MCD. The respective appointments of the petitioners were for a period of 30 days, but the tenure of their services has been extended from time to time since their initial appointment.

31. It is trite that the petitioners being working on daily wages cannot be replaced by other workmen on daily wages. The petitioners examined themselves and admitted that they came to know about the vacancies through the Employment Exchange, however, they had not got any letter issued by the Employment Exchange about the vacancies. Also admitted, no interview letters were issued to them before their appointments.

32. MW1 Chhattar Singh deposed that the petitioners were appointed on daily wages and their appointment letters were found to be forged and fabricated as the same were never been issued by the respondent Management.

33. There were 105 workers including the petitioners, who procured fake appointment letters. To this effect, an enquiry was conducted by the higher officers of the respondent Management and during the

course of investigation, it was found that the engagement letters were not issued by the respondent which has also been corroborated by the officers, who allegedly signed the appointment letters relied upon by the petitioners.

34. It is an admitted fact that the petitioners did not have the copy of the appointment letters upon which they were relying. Their services were dismissed along with other employees on the basis of report of the Screening Committee Ex. MW1/4, which consist the names of the petitioners. The termination was challenged before this Court and the petitioners were directed to appear before the Additional Commissioner along with original appointment letters and other original documents relied on, however, the petitioners failed to do so.

35. It is important to note that one Mukesh Kumar Bhardwaj, similarly situated workman, also filed a claim petition bearing I.D. No.100/07 before the learned Tribunal. While dismissing the same on 22.09.2010, the learned Tribunal recorded as under:-

“ AR for management has attacked the appointment of workman as fake appointment. It is stated by AR for management the appointment of the workman was the fake appointment in the MCD. The MCD has conducted the enquiry and whenever fake appointment was found dispensed the services of those who joined on fake appointment letter. It is further stated by AR for management that on the basis of fake appointment letter, the workman joined at M.C. Primary School, Sangam Park-I, Civil Line, Delhi. An enquiry was conducted by the screening committee and after investigation selection screening committee found that in 105 cases signatures of the competent authority on the engagement letters

were forged one and not of the concerned DEO/AEO. In the enquiry, it was found that the workman is one of those 105 persons in which engagement was gained on the basis of forge and fabricated engagements. The appointment on the basis of forge and fabricated appointment letter is more serious than the arbitrary and irregular appointment.

(v) It is proved that the workman was engaged by fake appointment letter on Rest Reliever post. Even on the date of the alleged appointment the workman had crossed the age limit for the appointment. In Govt. services no appointment can be made beyond the age limit and on the date of appointment the workman had crossed the age limit.

Accordingly, it is held that the question of termination does not arise since the appointment was based on forged and fabricated documents. It is also held that the workman was not eligible for the said post since when he joined the management he was of more than 30 years of age and according to age limit in Govt. services, he had already crossed the age. Hence, workman is not entitled for any relief. Award is passed in negative.”

36. Being aggrieved, the above named Mukesh Kumar Bhardwaj, challenged the same before this Court vide W.P.(C) No. 203/2011, wherein the Coordinate Bench of this Court vide its judgment dated 11.05.2011 held as under:-

“12. The counsel for the petitioner has next argued that the finding of the Industrial Adjudicator is perverse. I have perused the evidence by way of Examination-in-Chief and the Cross-Examination of the petitioner and of the witnesses of the respondent MCD. In fact the said evidence reveals that a proper inquiry was conducted qua 105 employees, detected by the Screening Committee

to have been appointed on the basis of forged documents and it was on the basis thereof only that the action was taken. It is also borne out that an FIR in this regard was also lodged and prosecution is underway.

13. The counsel for the petitioner has urged that the onus was on the respondent MCD to prove forgery and fabrication and which has not been done and thus the finding of the Industrial Adjudicator is perverse. In my view, the onus of proving that the documents of appointment were genuine and bona fide was on the petitioner, respondent MCD could not have been called upon to prove in the negative. It was for the petitioner to prove that the documents on the basis whereof he claimed appointment, were issued by the competent officers of the respondent MCD and in the normal course of the performance of their duties. Nothing of the sort has been proved by the petitioner.

14. The delay of 8 years on the part of the petitioner in raising the dispute is also in my opinion fatal to the case and sufficient for this Court to on this ground alone refuse to exercise jurisdiction. The petitioner, when the matter appears to have been hot, chose to lie low and is found to have raised the dispute only by way of wager. It is settled position in law that the delay in raising the dispute is sufficient for this Court to refuse to exercise discretion in the matter.”

37. It is important to note that the petitioners were dismissed from the service in the year 2000 and they raised the industrial dispute in the year 2006. They did not challenge the same for six years. To this effect, the respondent raised a preliminary objection in the written statement that challenge to the termination order passed in the year 2000 has been belatedly filed by the petitioners in the year 2006, i.e., after six years is an afterthought. Hence, while granting compensation

of Rs.50,000/- each in favour of the petitioners in lieu of reinstatement and back wages, the learned Tribunal considered this fact also.

38. In the case of ***Haryana Urban Development Authority Vs. Om Pal***, (2007) 5 SCC 742, wherein the Apex Court held that:-

“7. Moreover, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. Respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-95. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back-wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs. 25,000/-.”

39. Moreover, the relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merits. Every workman is not entitled to get something only because it would be lawful to do so. If this principle is applied, the findings of the Tribunal shall have no significance.

40. The Industrial Courts while adjudicating upon the disputes between the management and the workmen must take such decision

which would be in consonance with the purpose of law seek to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior Court to make them apply the cold letter of the Statutes to act mechanically. Rendition of justice would bring within its purview giving a person that is due to him and not what can be given to him in law.

41. In the case of *Mamni (supra)*, compensation of Rs.33,000/- was granted in lieu of reinstatement, whereas in the present case, a sum of Rs.50,000/- each has been granted in favour of the petitioners in lieu of the reinstatement and back wages.

42. It was upon the petitioners to prove the appointment letters, upon which they claim their employment, being issued by the competent officers of the respondent Management. Though the petitioners stated that information regarding the vacancies with the Management had been received through some source, however, they did not receive any call letter for appearing in the interview. Moreover, the respondent Management has also conducted an inquiry regarding the forged appointment letters by constituting a Committee consisting higher officers of the Management. In the inquiry, it is found that the signatures appended on the said appointment letters were forged. It is true that the respondent has not proved the inquiry report as per the procedure established by law, however, that alone would not entitle the petitioners for reinstatement with back wages,

which is a discretionary power vested with courts or tribunals on the basis of facts and circumstances of the case.

43. Before concluding, it is relevant to note the provisions contained in Section 11-A of the Industrial Disputes Act, 1947, which reads as under:-

“11A. Powers of Labour Court Tribunal, and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labor Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labor Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

PROVIDED *that in any proceeding under this section the Labor Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”*

44. Accordingly, wide discretion is vested in the Labour Courts/ Tribunals while adjudicating an industrial dispute relating to the discharge or dismissal of a workman.

45. Thus, in the present case, the learned Tribunal keeping in mind the facts and circumstances of the case has exercised its jurisdiction and accordingly, granted compensation of Rs.50,000/- each in lieu of reinstatement and back wages.

46. Keeping in view the aforementioned facts and the settled position of law, this Court finds no reason to interfere with the award dated 27.07.2013 passed by the learned Tribunal while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India.

47. Accordingly, these petitions are dismissed with no order as to costs.

**SURESH KAIT
(JUDGE)**

NOVEMBER 25, 2014
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