

\$~22

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

Decided on : 05.12.2014

+ **W.P.(C) 157/2011**

SATISH CHAND GUPTA

..... Petitioner

Through: Sh. N. Prabhakar, Advocate.

Versus

MCD AND ORS.

..... Respondents

Through : Sh. Mukesh Gupta, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The petitioners are aggrieved by an order of the Central Administrative Tribunal (CAT) dated 19.08.2009 in T.A. No.97/2009. They were aggrieved by the action of the respondent (MCD) in withdrawing their regularization orders.

2. The petitioners' case before the CAT was that they were originally working as daily wage employees at various places for the MCD when, on different dates between 2002 and 2003, orders of regularization were issued in respect of their employment. While so, alleging that there were large scale irregularities and scams - involving forgery and collusion with the officials of MCD, the petitioners' services were terminated as in the case of others too. Consequently, the petitioners had approached this Court by filing writ petitions. They were disposed of by common judgment dated 09.07.2007 (W.P.(C) 8379-99/2006, being *Satish Chand Gupta and Ors. v. MCD and Ors.*). In short, the learned Single Judge was of the opinion that the MCD – which had invoked proviso (b) to Section 95(2) of the DMC Act, could not

establish that it was not reasonably practicable to give the employees an opportunity of showing cause against the punishment. The MCD approached the Division Bench in appeal, being LPA 1176/2007 and LPA 1184/2007. These were disposed of on 09.10.2007. The Division Bench in the operative portion directed as follows:

“11. We are of the considered opinion that the manner in which action is taken against the respondent by the appellant is outside and exceeds the parameters of Section 95(2)(b) of the Act. In that view of the matter and for the reasons stated hereinabove, we find no reason to take a different view than what is taken by the learned Single Judge. We may however, hasten to add that we are not required to examine at this point how and what procedure should be followed by the appellant. Accordingly, while we do not interfere with the order passed by the learned Single Judge, we give liberty and leave it open to the appellant to proceed in the matter in accordance with law.”

(emphasis supplied)

3. After the disposal of the LPA, the MCD apparently carried the matter in SLP before the Supreme Court. This was disposed of on 26.07.2013, i.e. during the pendency of the present proceedings. On 10.01.2008, MCD issued notices to all the petitioners requiring them to show cause through “documents of initial engagement/proof of requisite period of engagement prior to your regularization in support of your reply.....”. The pleadings are unclear as to whether the petitioners, or any of them, at all complied with this requirement of having to furnish the original appointment/engagement letter or terms thereof. In this background, the regularization was sought to be withdrawn on 14.08.2008. This led to a fresh round of litigation in which the petitioners were unsuccessful. By the impugned order, the CAT dismissed the applications.

4. It is contended on behalf of the petitioners that once the learned Single Judge decided that the invocation of the “no enquiry” clause – embodied in Section 95(2)(b) of the DMC Act was unlawful, and the decision was not set aside by the Division Bench, the only lawful method of passing any adverse orders upon the petitioners was after a regular departmental enquiry. Instead, the MCD flouted the Court’s order by virtually invoking the same provision and dispensing with the regular enquiry and, instead, opting for a short-cut method unknown to law. Learned counsel argued that the proceedings held by the MCD nowhere disclose that the steps mandated by the Regulation 8, i.e. furnishing of charge sheet with allegations; providing list of documents, and; also full opportunity to each employee to lead evidence was not followed. In these circumstances, the impugned withdrawal of regularization orders cannot be sustained and the CAT fell into error in holding otherwise.

5. Learned counsel for the MCD submitted that the orders involved in the present case were part of a large scam unearthed within the department. The scam involved fraud and forgery. The allegations against the petitioners’ was that they managed to secure regularization orders without having ever worked prior to the date of their regularization orders, in the MCD. In other words, the records nowhere indicated that the petitioners had been employed by the MCD at all in any of its department or units; they were straightaway regularized on the premise that they were daily wage earners – which they never were.

6. No doubt, learned Single Judge held that the MCD’s action dispensing with the enquiry could not be countenanced – on the premise that

the MCD had involved proviso (b) to Section 95(2), at the same time, the Division Bench in the LPA left it open to the MCD - having regard to the circumstances, to devise a suitable method to determine the truth of the matter and give such opportunity as was necessary. Upon the issuance of Show Cause Notice (SCN), none of the petitioners were able to show that they were gainfully employed on daily wage basis prior to their orders of regularization. Taking note of these circumstances, the CAT rejected the application.

7. Learned counsel urged that having regard to all these facts and the further circumstance that even as on date, none of the petitioners have been able to establish through any documentary material that they were engaged on casual basis prior to their regularization orders, this Court should not exercise its discretion and interfere with the CAT's order. The CAT, in its impugned order, after discussing the background of circumstances, as well as the relevant provisions, including previous litigation between the parties observed as follows:

“21. Perusal of above would show that after reinstating the petitioners, matter was again got verified from concerned medical institutions but it came to be known that these persons had never worked on daily wage basis, which was the basis of regularization, therefore, order of regularization itself was withdrawn. It is this order which is under challenge in this petition.

22. Counsel for the petitioners vigorously argued that on same cause of action which was adjudicated by the Hon'ble High Court, respondents could not have withdrawn the regularization. However, the facts, as narrated above, would show that after the

orders were passed by the Hon'ble High Court, the petitioners were reinstated and their alleged daily wage service was got verified from concerned medical institutions, where the petitioners were shown to have worked as a daily wager. It was communicated by Institutions that the persons had never worked as daily wager in that institutions whereas the very basis of regularisation was that the petitioners had worked on daily wage basis with the MCD, therefore, it cannot be stated that the order is bad in law. Moreover Division Bench of the Hon'ble High Court had given liberty to proceed in accordance with law, respondents have categorically stated in the order that petitioners had not worked with MCD prior to their regularization yet petitioners have not given any proof of their engagement on daily wage basis prior to their regularization in the petition. Even in the present petition, there is neither any averment to show, where the petitioners had worked on daily wage basis nor any document has been placed on record to this effect. It is thus clear that the petitioners have not placed any document on record to prove that they had indeed worked with the MCD on daily wage basis, therefore, naturally the order of regularisation becomes invalid because regularisation is based on the presumption that the petitioners had worked on daily wage basis. When counsel for the petitioners was posed this question, he could not show us either any averment or any such document to substantiate their claim. The very fact that petitioners have not made any averment even in the petition before us compels us to come to the conclusion that the petitioners had not worked with the MCD on daily wage basis at all.

23. From the facts as narrated above, it is clear that the matter was got verified. Since it has been verified that petitioners had not worked with the MCD prior to their regularization, the respondents have rightly withdrawn the order of their regularisation.

24. After all, when petitioners had earlier approached the Hon'ble High Court, Single bench of the Hon'ble High Court

had quashed the order of termination for non-compliance of principle of natural justice as no show cause notice was given to the petitioners. Liberty was given to the respondents to hold an enquiry. However, when the matter was carried to the Hon'ble High Court in LPA, the D.B. clarified that the procedure to be adopted by MCD need not be decided by the court. Accordingly, it was left open to the MCD to proceed in the matter in accordance with law. It is thus clear that the order passed by learned single judge was modified by the Division Bench, therefore, the argument advanced by the counsel for the petitioners that on same cause of action respondents could not have passed the impugned order is rejected.”

8. The petitioners' complaint is that the MCD did not hold a regular enquiry. Firstly, when Satish Chand Gupta & Ors. preferred W.P.(C.) No.8379-99/2006, absolutely no opportunity had been granted by the MCD – not even a show cause notice had been issued. Straightaway, orders terminating their services were passed. To justify their action, the MCD had sought to place reliance on proviso (b) to Section 95(2). Section 95, itself, does not require that a detailed formal departmental inquiry should be held by the MCD. Section 95(2) only states that no officer or employee shall be punished under sub section (1) “*unless he has been given reasonable opportunity of showing cause*” against the proposed action. Proviso (b) liberates the MCD from granting an opportunity to show cause where, for reasons to be recorded, “*it is not reasonably practicable to do so*”. Therefore, to say that the learned Single Judge while disposing of W.P.(C.) No.8379-99/2006, had directed that a formal departmental inquiry should be held, would be a misreading of the statutory provision contained in Section 95(2) of the DMC Act. The Division Bench, it appears, was conscious of

this position and consequently made the observations as extracted above in para 11 of the judgment. Therefore, there is nothing to suggest that a regular departmental inquiry was mandated either by the DMC Act or by the decision of the learned Single Judge as clarified/modified in LPA Nos.1176/2007 and 1184/2007. Pertinently, in another batch of proceedings, this Court had to deal with similar complaints (in CWP 763/2008 and connected matters) where the writ petitioners were dismissed on 19.12.2008. The Court then held that the petitioners there were never appointed by MCD, and the question of compliance with DMC Act does not apply. This aspect was not even considered in the earlier round of litigation emanating from W.P.(C.) No.8379-99/2006 in *Satish Chand Gupta* (supra). This Court notices that neither before the CAT, nor in the present case - have the petitioners showed that they were employed on daily wage basis prior to their orders of regularization. If there were any difficulty in securing such documentary proof, surely, the RTI Act could have been utilized; equally, during pendency of the proceeding before the CAT itself, the petitioners could have sought for appropriate orders. They chose not to do so, and insisted upon their right to be given full opportunity in a departmental enquiry. Whilst a regular employee - who holds a lien to a post, or even a probationer appointed to a post, has to be ordinarily dealt with departmentally, when punitive adverse orders are contemplated (within the framework of the rules, requiring furnishing of charge sheet and the materials in support thereof, and full opportunity to lead such evidence as is desired by the Charged Official), when fundamentally the employment, or the basis of the employment, is itself in question - as in the present circumstance, and the incumbent is unable to show the premise on which

regularization order is made, i.e. whether she or he was, in fact, in reality previously employed on a daily wage basis, by submitting documentary proof or any such material (which onus squarely lay with him), the requirement of natural justice ought not to be stretched to such an extent as to result in absurdity. Had the petitioners showed - at the stage when they were called upon to produce the material that they indeed had some material basis to secure regularization orders (in the form of previous engagement, through documents), and the MCD had disregarded this and proceeded to terminate them, surely, there would have been some basis to urge that a full-fledged enquiry was necessary. Since the petitioners chose to maintain a studied silence, there can be hardly any doubt that they had nothing to say at all, and a full-fledged enquiry would be, in the opinion of the Court, an ideal formality. In short, the petitioners have not established that they were prejudiced by the MCD's opinion not to hold full fledged enquiry and by granting an opportunity to show cause against withdrawal of regularization. All these aspects were considered elaborately by the CAT.

9. The proceedings under Article 226 involve exercise of judicial and judicious discretion. In matters such as the present, the Court, by interfering with the order of CAT would - while paying homage to the letter of the law, in fact, be doing violence to public interest because the MCD would be held to an untenable standard, and asked to go through an empty formality. Judicial review is not meant to interfere with orders which do not occasion failure of justice, as in this case. For the foregoing reasons, no ground is made out to

interfere with the impugned order. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

DECEMBER 05, 2014/ajk

