



2024:DHC:748



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

% **Date of order: 18th January, 2024**

+ **W.P.(C) 1741/2003**

MCD

..... Petitioner

Through: **Mr. Arun Birbal and Mr. Sanjay Singh,**
Advocate

versus

KISHNI

..... Respondent

Through: **Mr. Jawahar Raja, Ms. Meghna De and**
Ms. L.Gangmei, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(A) a Writ of certiorari or any other writ or direction quashing the impugned award dated 16.02.2002 passed by the Ld. Sh. Lal singh, ADJ/Presiding Officer, labour Court No. III, Delhi;

(B) cost of petition be awarded in favour of the Petitioner;

(C) any other order or direction as deemed fit & proper in the facts and circumstances of the case may also be passed.”

2. The respondent was engaged on contractual basis as a part time *Safai Karamchari* in the year 1967 with the petitioner/Municipal Corporation of Delhi (hereinafter “MCD”).

3. The respondent raised an industrial dispute seeking regularisation on the



post of *Safai Karamchari* and the appropriate government vide its order bearing no. F.24(3212)/95-Lab./33303-08 dated 27th October 1995 referred the industrial dispute for adjudication to the Labour Court/Industrial Tribunal.

4. Thereafter, the respondent filed her statement of claim before the learned Industrial Tribunal contending that the respondent's counterparts, who were doing work similar to the petitioner, were treated as regular employee and the respondent, despite doing work similar to his regularised counterparts along with excellent record of service was treated as a part-time employee.

5. In the said industrial dispute, the respondent workman prayed that she may be regularized on the post of *Safai Karamchari* with proper pay scale along-with all the consequential benefits from her initial date of appointment i.e. from 1967.

6. The petitioner filed its reply to Statement of Claim before the learned Industrial Tribunal stating that the respondent was merely employed at cattle pound for 2-3 hours in a day on part-time basis. Hence, the respondent's services cannot be regularized as there is no case made out *qua* her claim.

7. Subsequently, the learned Industrial Tribunal passed the award dated 16th February 2002 in case bearing no. 125/1995 in favour of the respondent and against the petitioner, holding that the non-regularization of services of the respondent on the post of *Safai Karamchari* is illegal and unjustified. The learned Industrial Tribunal also held that the respondent is entitled to be regularized on the post of *Safai Karamchari* w.e.f. from 29th December 1992 at proper pay scale and allowances along with the consequential benefits.

8. Aggrieved by the impugned award dated 16th February 2002, the



petitioner has approached this Court.

9. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned award since it failed to take into consideration the entire facts and circumstances of the dispute.

10. It is contended that the the impugned award is totally erroneous as the respondent being a part-time worker cannot be regularized and no directions could be given to regularize a part-time worker *de hors* the policy of the petitioner entity in this regard.

11. It is submitted that the learned Tribunal failed to appreciate that the respondent discharged the functions as a part-time *safai karamchari* of cleaning the cattle pound and to collect the dung/refuse of the cattle and the same was only 2-3 hours job in a day, hence the respondent cannot be employed as a regular employee.

12. It is further submitted that the cattle pound was situated in area admeasuring 200 sq. yds., where not more than 22-30 cattle were present at a given point of time. The said cattle pound was only a transit area where stray cattle were kept temporarily after being impounded from the streets. Thereafter, the stray cattle were sent to the Gaushalas. Hence, the respondent was the only *Safai Karamchari* engaged on a part-time basis to clean the cattle pound, since it was situated in a very small area of 200 sq. yds.

13. It is further submitted that the said cattle pound at Rajouri Garden was closed in July, 2004 and shifted to Baprola. Thus, the petitioner also continued to work as a part-time *safai karamchari* for cleaning the cattle pound till it was shifted to Baprola. Since, as per the salary slips on record, the respondent



worked as a part-time *safai karamchari* till January 2009.

14. It is submitted that the respondent was engaged w.e.f. 21st September 1983 and was paid Rs. 40/- per month which was subsequently increased to Rs. 250/- per month w.e.f. 1st June 1989. Hence, the aforesaid salary slips clearly indicate the fact that the respondent was working as a part-time *Safai Karamchari* with the petitioner.

15. It is submitted that the learned Tribunal passed the impugned award on the ground that the management witness had not produced the attendance register of the respondent or any other record pertaining to the respondent workman. The learned Industrial Tribunal erred in passing the award on the above said ground since the onus of proof was on the respondent to show that she was working full time and not for 2-3 hours a day. However, no evidence was led by the respondent in this regard, apart from certain vague allegations.

16. It is submitted that the respondent in her statement of claim wrongly contended that she was treated as part-time employee, while her counter parts doing the identical work, were being treated as regular employee. The respondent however, did not lead any evidence to specify any counter parts, which she alleged did identical work as the respondent and was being treated as regular employee. Hence, the onus of proof in this regard was on the respondent, which was never discharged before the learned Tribunal.

17. It is submitted that that the learned Industrial Tribunal did not hold the respondent as a full time *Safai Karamchari*, however, erroneous directions have been given to regularize the respondent to the post of *safai karamchari* at proper pay scale w.e.f. 29th December 1992.



18. It is submitted that the impugned award is bad in law, since no directions could have been given to the petitioner to regularize the service of the respondent, when the learned Industrial Tribunal itself held the respondent is a part-time worker. Hence, when the learned Tribunal has itself held and considered the respondent to be a part-time worker, no direction could have been given for regularization of the respondent's services in the absence of any policy of the petitioner for regularization of its part-time employees.

19. It is further submitted that the only policy, which is in existence in the petitioner entity, is with respect to regularization of daily wagers and the same has been dealt in detail in the judgment of ***Municipal Corporation of Delhi vs. Gauri Shankar & Ors., 1999 (51) DRJ 127***, wherein, the Hon'ble Supreme Court held that the daily wagers were to be regularized as per their seniority as per the scheme of the petitioner.

20. It is submitted that the learned Industrial Tribunal has mentioned about a circular dated 21st September 1971, whereby, the respondent made appointments on class-IV post amongst daily wage/muster roll/part-time employees. In this regard, it is contended, that no such policy has been prevalent in the year 1971, and the only policy for regularization been followed by the respondent is the policy for regularization of daily wagers which was formulated pursuant to directions of the Hon'ble Supreme Court passed in the year 1987.

21. It is further submitted that merely on the ground that some policy by the respondent was in force for a particular period, does not, in any way, creates a surmise that the policy cannot be amended or modified under any



circumstances. Hence, when there is no policy for regularization of a part-time employees, the learned Industrial Tribunal erred in giving such directions for regularization of part time employee.

22. It is submitted that the name of the respondent does not figure in any seniority list, as no seniority list of any part-time employee is maintained. A seniority list of daily wagers is being maintained and regularization of daily wagers is done as per their seniority based on the scheme of regularization. The said scheme of regularization is only applicable to the daily wagers who are working full time.

23. It is submitted that the learned Industrial Tribunal has failed to appreciate that the relief of regularisation with back wages cannot be allowed to the respondent workmen except in exceptional case or rare case.

24. In view of the foregoing submissions, the learned counsel for the petitioner prayed that the instant petition may be allowed and the reliefs as prayed by the petitioner may be granted by this Court.

25. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that at the outset the instant petition is devoid of merit, hence, is liable to be dismissed.

26. It is submitted that impugned award suffers from no illegality or infirmity and the learned Industrial Tribunal has considered the submissions of both the parties and accordingly, passed the award in accordance with law.

27. It is submitted that the instant writ petition is filed with the *mala fide* intention to harass the poor respondent workman, and the grounds raised by the



petitioner are flimsy and insubstantial.

28. It is submitted that the petitioner has accorded status of regularised employee to the counterparts of the respondent who were doing work similar to the respondent and has wrongly, accorded the respondent status of part- time employee upon the respondent.

29. It is submitted that the petitioner, as held by the learned Industrial Tribunal, is entitled to regularization of her services from 29th December, 1992 as well as the arrears payable to her in this regard.

30. It is contended that the respondent has placed on record evidence such as the letter as per which she was compelled to work at a lower pay-scale in comparison to her counter- parts, respondent's demand letter dated 29th December 1992 seeking regularisation of services, etc, and such documents have substantiated her claim for the reliefs as sought by the respondent.

31. In view of the foregoing submissions, the learned counsel for the respondent prayed that the present petition is devoid of any merits and the same may be dismissed by this Court.

32. Heard the learned counsel for the parties and perused the material on record including the pleadings, the various documents on record including the impugned order and judicial precedents cited.

33. It is the case of the petitioner that the impugned order passed by the learned Industrial Tribunal suffers from illegality and is liable to be set-aside on the ground that it is against the settled principle of laws. It has been submitted that the respondent was working for 2-3 hours a day with the petitioner, therefore, she was merely a part-time worker and hence, her



employment could not have been regularized.

34. In rival contentions, it has been submitted on behalf of the respondent that the impugned award has been passed in accordance with the law and the respondent has substantiated its claims by placing sufficient evidence on record. It has been further contended that the instant petition is merely to harass the poor workman respondent. It has been contended that the counter parts of the respondent workman are doing similar work and their services have been regularized. Therefore, the award passed by the learned Tribunal is based on proper consideration of facts and evidence, and there is no infirmity or illegality thereto.

35. At this stage, it is appropriate to narrate the law *qua* the adjudication of industrial dispute under the writ jurisdiction of this Court. Under Article 226 of the Constitution of India, this Court has a very limited power to intervene into the working of the executive. The High Court under its writ jurisdiction shall not intervene with the working of the executive unless there is a prejudice caused to any party by the executive authority or the executive authority is not acting as per the mandate of a particular statute.

36. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court or the Tribunal was insufficient or



inadequate to sustain the impugned finding.

37. Before advertng on the merits of the case, this Court will reiterate what must be observed by the High Court while exercising an issuance of writ in the form of certiorari and the same can be fairly summed up *via* two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or peruse the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put, certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not appeal.

38. Now advertng to the facts of the instant petition.

39. The reference made by the appropriate government vide its order bearing no. F.24(3212)/95-Lab./33303-08 dated 27th October 1995 referred the industrial dispute for adjudication to the learned Industrial Tribunal. The relevant portion of the said reference has been reproduced herein below:

“Whether Smt. Kishni, Part-time worker is entitled to be regularized on the post of Safai Karamchari in proper pay scale from her initial date of appointment and if so, what direction are necessary in this respect”

40. Upon perusal of the terms of the reference, it is evident that the reference



made by the appropriate government to the learned Industrial Tribunal to adjudicate upon the issue whether the respondent is entitled to be regularized on the post of *Safai Karamchari* at proper pay scale from her initial date of appointment, and if the respondent is regularized from his initial date of appointment, then what directions need to be passed in this regard.

41. Now this Court will examine the impugned award.

42. The impugned award pertaining to issue no. 1 is whether the petitioner currently engaged as a part-time worker is entitled to be regularized on the post of *safai karamchari* at proper pay scale from her initial date of appointment, if so, what directions are necessary in this respect. The relevant portion of the award has been reproduced herein below:

“ 9. ISSUE NO. 1

This issue is comprised of the terms of reference) as referred in para no. 1 of this award , to ascertain whether Smt. Kishni part time worker is entitled to be regularized on the post of safai karamchari in proper pay scale from her initial date of appointment, if so, what directions are necessary in this respect? The stand of the management is that she was employed w.e.f. November 1983 as part time employee and she worked only for 2-3 hours a day. In this respect Sh. C.P. Singh MWI in his cross examination could not stated that Smt. Kishni has been working since 1967. However, he stated that as per record she has been working since November 1983. Thus this witness has deposed contradictory to believe. He does not know about the attendance of the workman. He also does not know whether there was open space outside the building. However, he admitted that Smt. Kishni was removing the dung of the cattle from the rooms and keeping the place neat and clean. He also admitted circular dated 21.9.71. He could not say whether documents Ex. MWI/1 to Ex. MWI/4 were bogues documents.



10. Besides that in the reply itself the management has averred contrary statements where it is submitted that she had given in writing on 28.3.83 that she cannot work in MCD due to reasons best known to her, but later on 21.9.83 she had requested in writing to engage herself again as part time safai karamchhari. As such she was engaged as part time safai karamchhari iw.e.f. 1.11.83. This same show that she was not only employed on 1.11.83 but had been working prior to 23.8.83. However, the management has not produced the record of attendance and other records pertaining to her which could throw light on material controversy in this matter, which invite adverse inference against the management. Even on persual of management document Ex. MWI/3, it is seen that she had given in writing earlier because she was getting less money, but subsequently she was ready to work in less money/remuneration. On the other hand, it goes to show that she was compelled to work only for the amount given by the management as per their choice as she had no other way to earn her bread. On persual of workman documents, it is revealed that Ex.WWI/9 is an application dated 6.8.83 requesting for regularization of her services as she had been working for 19 years and removing the dungs of .about 100 cattles and doing cleaning of the premises and she has been waiting for her regularization since long. Ex.WWI/9 and Ex.WWI/10 are to the same effect. Ex.WWI/12 is circular dated 21st sept.,1971, whereby MCD decided to make appointment on class IV post amongs daily wage/muster roll/part time employees only. It appears that the superiors of this workman have not even cared about the circular of MCD like Ex.WWI/12. It appears that the management has prepared documents Ex.MWI/1 to MWI/4 just to cause an artificial break in the service of the workman with ulterior motives.

In these circum stances I have no other alternative except to draw adverse inference against the management and accept the



evidence on behalf of workman that the workman was engaged in the year 1967 and she has been performing the work for whole time but treated part time. She had been waiting for her regularization for more than 3 decades, but so far she has not been regularized. Even though as per circular Ex.WWI/12, she should have been given a regular appointment in due course. Although as per her work for whole time, she is entitled to the wages / for whole time, but since long time has passed and she served demand notice only vide demand notice dated 29.12.1992. It will not be justified to direct her regularization from initial date of her appointment. However, the ends of justice shall meet, if her regularization is directed from the date of demand notice. Accordingly it is held that the workman is entitled to be regularised on the post of safai karamchari w.e.f. 29.12.92 in proper pay scale of safai karamchari with usual allowances. This issue is accordingly answered in favour of the workman and against the management.

11. In view of my above findings to the foregoing issues, the claim of the workman Smt. Kishni partly succeeds and in order to answer the query in the reference it is held that Smt. Kishni, the part time worker is entitled to be regularized on the post of safai karamchari in proper pay scale from 29.12.92. She is also entitled for difference of pay from the said date. The management is directed to regularize her services accordingly and pay arrears of difference of pay to workman. This award is accordingly passed in favor of workman and against the management. Appropriate government be informed.

Announced in open court ”

43. It is inferred from the bare reading of the impugned award that the learned Industrial Tribunal observed that MW1, i.e., Sh. C.P Singh deposed that the respondent was removing dung of the cattle and admitted circular dated 21st September 1971. As per the aforesaid circular, the respondent was



appointed on class-IV post amongst daily wage/ muster roll/ part-time employees. Furthermore, the superiors of the petitioner were appointed on class-IV, however, the petitioner was not even considered for the same.

44. The documents i.e, Ex. MWI/1 to MWI/4 were been filed by the petitioner only to indicate an artificial break in the service of the workman. Upon perusal of the evidence on record, i.e. Ex. MWI/3, the learned Industrial Tribunal, concluded that the respondent was being forced to work at a lower wage.

45. Finally the learned Industrial Tribunal held that the evidence filed on behalf of the respondent establishes their case and she could have been given regular appointment as per the Circular dated 21st September 1971. Since, the respondent raised demand notice on 29th December 1992 for regularization, the learned Industrial Tribunal further held that she is entitled for regularization from 29th December 1992, although, she was engaged as a workman from the year 1967.

46. The impugned award pertaining to the issue no.2, whether the respondent has been working on part – time basis or full- time basis is discussed hereunder. The relevant portion of the same has been reproduced herein below:

“The appropriate government vides its Order No. F.24(3212)/95-Lab./ 33308-08 dated 27-10-95 had sent us an industrial dispute existing between the management of M/s. Municipal Corporation of Delhi and its workman Smt. Kishni for adjudication to my ld. Predecessor Sh. Bharam Paul , the presiding officer of this Industrial Tribunal No.111 on the following terms of reference:



“Whether Smt. Kishni, Part-time worker is entitled to be regularized on the post of Safai Karamchari in proper pay scale from her initial date of appointment and if so, what direction are necessary in this respect?”

2. The workman Smt. Kishni filed her statement of claim with the averments that she was employed in the Municipal Corporation of Delhi since 1967 as a safai Karamchari. Although she has been working for whole time and performed duties for more than 5 hours a day, but she was treated as part time and is being paid at Rs. 250/- per month as her monthly wages. She has been doing duties identical as that of regular employees, who as drawing their salary in the pay scale of Rs. 70-85/- which was revised to Rs. 196-232/- w.e.f. 1.1.78 and again revised to Rs. 750-940/- w.e.f. 1.1.86. The regular counterpart are enjoying the benefit of uniform, EL, CL, gazetted/ festival/restricted holidays, medical leave etc. which is completely denied to the workman, though she has unblemished and uninterrupted record of service. The action of management is wholly illegal, bad, unjust and malafide. The workman seeks an award in her favour holding that she is entitled to be regularised on the post of Safai Karamchari in proper pay scale with consequential benefits from her initial date of appointment i.e. 1.1.67. She be also held entitled to the difference of salary from 1.1.67 on the principles of equal pay for equal work with costs.

3. The management resisted the claim of the workman and filed reply controverting the allegations on merits in parawise reply besides taking preliminary objections. It is denied that she was employed since '1967 or she has been performing the work for more than 5 hours a day. It is submitted that she was employed w.e.f. 21.9.83 as part time safai karamchari to clean the cattle pond for only 2-3 hours a day at a fixed remuneration of Rs. 40/- per month. It is further submitted that she had given in writing on 23.8.83 that she cannot work in MCD due to the reasons best



known to her but later, on 21.9.83 she had requested in writing to engage her again as part time safai karamchhari and as such she has again engaged as safai karamchhari w.e.f. 1.11.83. The MCD has a specific policy for regularization of its daily rated/ casual/muster roll employees in phased manner. The workman is working as part time safai karamchhari against a post of part time safai karamchhari. The department has neither any post of regular safai karamchhari nor requires the services of workman for full day, seeing the nature of work, which the workman is performing. Infact, no part time safai karamchhari has been regularized by department. By way of legal objections it is alleged that the claim has been filed in mechanical way without due application of mind. The workman has not mentioned the timing of her daily working. The workman is contractual laborer and she was deployed by MCD as a part time safai karamchhari for only cattle pond, how she can engage himself on, regular duty as well. Her application under section 33-c (2) of the Industrial disputes act was dismissed. Her claim is bad because her working hours are only 3 hours a day, while the working hours of regular employees are for 8 hours a day.

4. The workman controverting the contrary allegations, of written statement/reply filed rejoinder reaffirming the averments of her statement of claim.

5. On 16.11.1998, from the pleadings of the parties, the following issues were framed:

1. As per the terms of reference.

2. Whether the claim is not maintainable for the reasons stated in para 1 to 4 of the preliminary objections of written statement?

6. The parties were directed to lead their respective evidence after framing of the issues and workman Smt. Kishni examined herself as WWI and tendered her affidavit Ex.WWI/A alongwith documents Ex.WWI/1 to Ex. WWI/13 and closed her evidence. The management examined sh. C.P. Singh as MWI and closed the



evidence. During the examination of MWI, management exhibited four documents Ex. MW1/ to Ex. MW1/4.

7. I have gone through the entire record including the evidence adduced, oral and documentary, meticulously and heard Sh. Anil Goel, management representative and Sh. Rajiv Aggarwal, workman representative at length. My issue wise findings are as following.

8. ISSUE NO.2

The onus to prove this issue was on the management that the claim is not maintainable for the reasons stated in para no. 1-4 of the written statement. The allegations of the management are that the claim is filed in mechanical manner and the timings of her daily working are not specified and the workman has been a contractual laborer as a Part time Safai Karamchhari. Her application under Section 33C(2) of Industrial Disputes Act has been dismissed as not maintainable and her claim is bad as her working hours are only for 2-3 hours a day while the regular employees has 8 hours a day . The management witness Sh. C.P Singh has not produced the attendance register pertaining to workman or any other record that she worked only for 2-3 hours because it is the management who to maintain the record of attendance and working hours . The application under Section 33 C (2) of the Industrial Disputes Act is admittedly dismissed as not maintainable. It means that it has been dismissed on technical ground and not on merit. Therefore, the dismissal of that application has no bar in this matter. Even otherwise, the dispute is entirely different, to the dispute which may fall under Section 33 C (2) of the Industrial Disputes Act. Thus the management has not established the alleged facts by cogent evidence. Accordingly this issue is answered in favour of the workman and against the management.”

47. Learned Industrial Tribunal while adjudicating upon issue no. 2 held that



the petitioner was not able to prove its contention that the respondent was working for 2-3 hours a day while the counterparts of the respondent were working for 8 hours/day. Moreover, the application under Section 33 C (2) of Industrial Disputes Act, 1947 was dismissed as not maintainable on the technical ground and not on merits. Furthermore, the dispute under Section 33 C(2) of Industrial Disputes Act, 1947 differs from the dispute before the learned Industrial Tribunal. Accordingly, the issue was decided in favour of the respondent and against the petitioner.

48. This Court is of the view that the learned Tribunal has considered the various evidence on record filed by the respondent such as the demand notice dated 29th December, 1992 seeking regularization. Moreover, learned Industrial Tribunal has correctly held that as per the circular dated 21st September, 1971 Class- IV employees of the petitioner were to be regularized, however, only the seniors of the respondent were taken into consideration by the petitioner and not the respondent.

49. In view of the aforesaid discussion, the learned Industrial Tribunal has rightly held that the respondent is entitled to be regularized w.e.f 29th December, 1992 at proper pay scale and that the arrears in this respect shall be paid to the respondent

50. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or such error must go to the root of the matter. However, no such circumstances are present in the instant petition.

51. The writ jurisdiction is supervisory and the Court exercising it is not to



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act as an appellate court. This Court is of the considered view that the instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a re-examination and review of the evidence adduced before the learned Tribunal despite the fact that there are no such special circumstances that require the interference of this Court.

52. In view of the discussions in the foregoing paragraphs, I do not find any merit in the instant petition and the same is liable to be dismissed.

53. Therefore, it is held that the impugned award dated 16th February 2002, passed by the learned ADJ/Presiding Officer, Labour Court No. III, Delhi in I.D 125/1995, is hereby, upheld.

54. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

55. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 18, 2024
RK/DB/RYP