

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

+ Judgment delivered on: October 6, 2015

% **W.P.(C) No. 486/2004**

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Ms. Amita Gupta, Advocate.

versus

SHRI RISHI PAL SINGHRespondent
Through: Ms. Neelam Tiwari for Mr. Rajiv
Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Municipal Corporation of Delhi (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Article 226 of the Constitution of India assailing the validity of the impugned Award dated 11.11.2002 passed by the Presiding Officer, Labour Court No. IX, Karkardooma, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 1932/94.
2. The brief facts as stated are that the respondent-workman, i.e., Shri Rishi Pal Singh is alleged to be in the employment of Municipal

Corporation of Delhi as *Mali/Beldar* w.e.f. 26.03.1990 in CL Zone on the Muster Roll Basis and was being paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948. The respondent-workman had an unblemished and uninterrupted record of service to his credit till 27.07.1991. The petitioner-management without assigning any valid reason terminated the services of the respondent-workman on 27.07.1991. The respondent-workman claims to have completed 240 days of service with the petitioner-management in a year prior to his termination. The petitioner-management instead of regularising the respondent-workman terminated his services despite the respondent-workman having acquired the status of a workman under Section 2(s) of the Industrial Disputes Act, 1947 and allegedly violated the resolution No. 1002 of the Standing Committee of the MCD and Section 25-F (a),(b) & (c), and 25- G & H of the Industrial Disputes Act, 1947 read with Rules 76, 77 and 78 of the Industrial Disputes Act (Central) Rules, 1957. The respondent-workman raised an industrial dispute and the same was referred by the Secretary (Labour), Government of NCT of Delhi, vide reference No. F-24(2838)94-Lab./50496-501 dated 24.10.1994 to the Labour Court for adjudication on the following terms of reference:

“Whether the services of Shri Rishi Pal Singh have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

The respondent-workman filed his statement of claim before the Labour Court, the petitioner-management filed its written statements and thereafter, rejoinder on behalf of the respondent-workman was filed and after framing the issues, both the parties led their respective evidence on their behalf and thereafter, the Labour Court passed the impugned Award dated 11.11.2002.

Aggrieved by the aforesaid Award dated 11.11.2002, the petitioner, i.e., Municipal Corporation of Delhi, has preferred the present Writ Petition.

3. The learned counsel causing appearance on behalf of the petitioner-management, i.e., Municipal Corporation of Delhi has contended that prima facie it is for the respondent-workman to prove his status of a workman under Section 2(s) of the Industrial Disputes Act, 1947. The learned counsel further submitted that in the instant case, the respondent-workman was engaged for a specific work and for a specific period and after completing the work, the workman has left the employment of the petitioner-management and the management has not terminated the services of the workman as alleged by the respondent-workman.

The learned counsel of the petitioner-management further submitted that the impugned Award passed by the Industrial Adjudicator

is bad in law and the Industrial Adjudicator exceeded its jurisdiction and reached the wrong conclusion, which needs to be set aside.

4. On the other hand, the learned counsel on behalf the respondent-workman has submitted that the petitioner-management has suppressed the material facts and taken a false plea that the respondent-workman was engaged for a specific period, whereas the workman was in the employment with the petitioner-management, i.e., Municipal Corporation of Delhi as *Mali/Beldar* in its Horticulture Department w.e.f. 26.03.1990 in CL zone on muster roll basis and he remained in the employment of the petitioner-management till 27.07.1991.

The respondent-workman acquired the status of workman prior to his date of termination, i.e., 27.07.1991. Therefore, the respondent is entitled to be reinstated with consequential benefits along with back wages.

5. The Hon'ble Supreme Court in the case of ***Jasmer Singh vs. State of Haryana, (2015) 4 SCC 458***, has made the following observation:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and

other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

In the instant case, the respondent-workman has alleged that the workman was in the employment of the petitioner-management w.e.f. 26.03.1990 as *Mali/Beldar* in CL zone and he was being paid wages under the Minimum Wages Act, 1948 as fixed and revised from time to time, till 27.07.1991, on which date his services were illegally terminated by the petitioner-management.

6. The respondent-workman has further specifically stated that during the course of employment with the management, the petitioner-management deliberately has not shown his seniority in the seniority list whereas the petitioner-management regularised the services of the daily wagers upto 31.03.1990 w.e.f. 01.05.1995. The workman further contends that the claim of his colleague, i.e., Shri Ranbir Singh, who was in the employment of the petitioner-management for the relevant period has been decided vide I.D. No. 80/96 by the Labour Court No. VI.

7. The petitioner-management while admitting the respondent-workman's engagement with the management as daily wage *beldar* w.e.f. 26.03.1990 has taken the plea that he was employed for a specific work and he was disengaged when the work was completed.

Once the petitioner-management admits that the respondent-workman was engaged by the petitioner-management, the onus shifts on the management to prove the manner in which the workman was disengaged from the employment. There is no specific plea taken by the management as to on which date the respondent-workman was disengaged from services of the petitioner-management. Since no specific date is pleaded in the written statement of the petitioner-management, the plea taken by the respondent-workman that he was disengaged from the employment on 27.07.1991 is taken to be correct.

8. There is no documentary record available on the file to show that factually the respondent-workman was engaged for a specific period against specific work. Moreover, the plea taken by the petitioner-management that the workman was employed for a specific work and for a specific period does not seem to be convincing as the petitioner-management has neither pleaded nor placed on record any documents to show that the petitioner-management has disengaged the respondent-workman after completion of the specific work.

9. The policy of regularization of the daily wage workmen at the relevant period is evident from the seniority list relied upon by the respondent-workman and further from the evidence of the award of the Labour Court - VI in the case of ***Ranbir Singh vs. MCD*** in I.D. No. 80/96. The facts, circumstances and the documents available on the record make this Court reach the conclusion that the respondent-workman has acquired the status of a 'workman' under Section 2(s) of the Industrial Disputes Act, 1947, and worked for 240 days in a year prior to his alleged disengagement plea taken by the management, i.e., on 27.07.1991.

Once the workman attains the status of a 'workman' under Section 2(s) of the Industrial Disputes Act, 1947, and completes 240 days of service in a year, the onus shifts on the management to prove that his services were terminated as per the provisions of Section 25-F and G of the Industrial Disputes Act, 1947.

There is no document on record to suggest that any notice was ever issued to the workman on his termination after completion of 240 days of service or that the petitioner-management adopted the due procedure for his termination from services.

10. Consequently, the respondent-workman is deemed to be a 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 and he has worked for 240 days in a year and therefore, his services could only

be terminated in accordance with Section 25-F of the Industrial Disputes Act, 1947.

11. As discussed above, this Court while exercising its powers under Article 226 of the Constitution of India finds no merit in the present Writ Petition by placing reliance on the judgments of the Hon'ble Supreme Court rendered in the case of *Govt. of A.P. & Others vs. Mohd. Nasrullah Khan*, (2006) 2 SCC 373 and *Raj Kumar Dixit vs. Vijay Kumar Gauri Shanaker*, 2015 (6) SCALE 265, 2015 LLR 990.
12. Consequently, the present Writ Petition is dismissed. No order as to costs.

I.S.MEHTA, J

OCTOBER 6, 2015

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