

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

Judgment delivered on: March 27, 2015.

+ W.P.(C) 3347/2014

RAVI DASS

..... Petitioner

Through Mr. Raman Duggal, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION..... Respondents

Through: Mr. R.V. Sinha, Mr. R.N. Singh &
Mr. Amit Sinha, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. The present Writ Petition has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India challenging the correctness of the order dated 04.10.2013 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Original Application (*in short 'OA'*) No.1491/2012. The petitioner also seeks to challenge the order dated 06.01.2014 passed by the learned Tribunal dismissing the Review Application (*in short 'RA'*) No.187/2013 preferred by the petitioner.

2. In the said OA No.1491/2012, the petitioner who has been working as a Municipal Engineer-cum-Engineer-in-Chief w.e.f. 01.12.2005 sought enforcement of the Resolution No.428 dated 30.12.2002 passed by the Municipal Corporation of Delhi (*in short* 'MCD') approving the pay scale of the petitioner in the revised scale of Rs.22400- 24500/- w.e.f. 01.12.2005. The appointment to the said post was initially on *ad hoc* basis but the same was approved by the MCD vide Resolution No.7 dated 27.02.2006 and the same was also regularised by the Union Public Service Commission (*in short* 'UPSC'). In the said OA, the petitioner was seeking enforcement of Resolution No.7 dated 27.02.2006, Resolution No. 456 dated 06.11.2006 and Resolution No.382 dated 09.11.2009, seeking pay scale of Rs. 22400-24500/- w.e.f. 01.12.2005 and revised pay scale as per the 6th Central Pay Commission alongwith interests @ 12 % on the arrears between the difference of the two pay scales. By order dated 04.10.2013, the learned Tribunal allowed the OA preferred by the petitioner after taking into consideration the identical relief granted by the learned Tribunal in the case of one C. M. Viz but since the decision of the learned Tribunal in the case of C.M. Viz was under challenge before the High Court, therefore, the impugned order

dated 04.10.2013 passed by the learned Tribunal in the case of the petitioner was also made subject to the result of W.P. (C) No. 2040/2012 preferred by the respondent in the case of C.M. Viz. The learned Tribunal also declined the request of the petitioner for payment of interest on the arrears of the amount.

3. It may be relevant here to mention that earlier vide order dated 12.03.2013, the learned Tribunal had adjourned the said OA of the petitioner *sine die* so as to await the decision of the High Court in W.P. (C) No. 2040/2012 filed by the respondent challenging the order of the learned Tribunal in the case of C.M. Viz. Later the petitioner filed RA No.57/2013 in OA No.1491/2012, pleading to decide his case based on the view taken by the learned Tribunal in the case of C.M. Viz so that the issue in his favour can also be fairly decided by the High Court of Delhi. Agreeing with the contention of the petitioner, the learned Tribunal recalled the order dated 12.03.2013 whereby proceedings were adjourned *sine die* and had passed the impugned order dated 04.10.2013.

4. The said order dated 04.10.2013 was again sought to be reviewed by the petitioner by filing an RA No.187/2013, but the learned tribunal dismissed the same terming it as an attempt to abuse the process of Court.

The learned Tribunal in the said order referred to the averments made by the petitioner in paras 5 and 11 of his OA No.1491/2012 and also in RA No.57/2013 wherein the petitioner himself claimed that his case is similar to the case of C.M. Viz and held that when an adverse order was passed against C.M. Viz by the High Court, the petitioner filed the RA No.187/2013.

5. Assailing the legality and correctness of the order dated 04.10.2013 passed by the learned Tribunal in OA No.1491/2012 and the order dated 06.01.2014 passed by the learned Tribunal in RA No. 187/2013, Mr. Raman Duggal, the learned counsel for the petitioner vehemently contended that the learned Tribunal by the impugned order dated 04.10.2013 had allowed the OA preferred by the petitioner for parity of reasons with the case of C.M. Viz making the order subject to the outcome of W.P. (C) No.2040/2012, under a mistaken belief that the High Court was ceased with W.P. (C) 2040/2012 preferred in the case of C.M. Viz and the same was still pending. The learned counsel also submitted that the said glaring error which was apparent on the face of the record was made one of the main grounds to seek review of the order dated 04.10.2013 by the petitioner in RA No. 187/2013 contending *inter-*

alia that W.P. (C) No.2040/2012 was no more pending and was already disposed of vide order dated 23.09.2013, and therefore, the relief granted to the petitioner in terms of the impugned order dated 04.10.2013 could not be made contingent upon the outcome of the W.P. (C) No.2040/2012. The petitioner also averred in his review petition that he was not even a party to the writ petition concerning C.M. Viz and even the facts of the case of the petitioner were distinct and distinguishable but the learned Tribunal without giving any weightage and credence to the cogent pleas raised by the petitioner dismissed the same terming the review petition as a gross abuse of process of the Court. The learned counsel for the petitioner also highlighted the distinguishable facts between the facts of the case of the petitioner and that of Mr. C.M. Viz and these distinguishable features can be reproduced as under:-

Sl. No.	W.P. (C) 2040/2012 C.M. Viz v. MCD	O.A. No. 1491/2012 Ravi Dass v. MCD (Petitioner)
1.	Mr. C.M. Vij was hold the post of Engineer-in-Chief on ad hoc basis and further the case of Mr. C.M. Vij pertained to the upgradation in the pay scale while holding the post of Engineer-in-Chief on ad hoc basis.	Petitioner was appointed as the Municipal Engineer-cum-Engineer- in- Chief on regular basis after his suitability was assessed by the DPC; his appointment on regular basis was approved by the Corporation vide Resolution No.382 whereby the petitioner was regularised as

		Municipal Engineer- cum-Engineer- in- Chief w.e.f. 01.12.2005 in the pay scale of Rs. 22400- 24500 in the revised pay Band-4 Rs. 37400- 67000 + Grade Pay Rs. 12000 w.e.f. 01.01.2006.
2.	The subject matter in Mr. C.M. Vij's case was the implementation of Resolution No. 428 pertaining to granting an ad hoc Engineer-in- charge upgradation in the pay scale from Rs. 18400-22400 to Rs. 22400- 24500 w.e.f. 01.01.1996.	The subject matter of the present petition is Resolution No. 382 whereby the petitioner was appointed as Municipal Engineer & Engineer- in- Chief in the pay scale of Rs. 22400-24500 w.e.f. 01.12.2005.
3.	Vide judgment dated 23.09.2013 the Hon'ble High Court held Resolution No. 428 to be void on the ground that the Commissioner did not concur with the proposal.	It is pertinent to mention here that in the present case Resolution No. 382 was passed pursuant to the Proposals forwarded by the Commissioner who concurred with the same.
4.	The facts of the case are distinct as Mr. Vij was working as an ad hoc Engineer-in-charge having substantive post of Superintending Engineer.	Resolution No. 382 was passed in accordance with Section 89 of the DMC Act which inter-alia stipulates that the Corporation shall appoint the Municipal Engineer on such monthly salaries and allowances as may be fixed by the Corporation.

6. The learned counsel for the petitioner in support of his arguments placed reliance on the following judgments:

- i. *Rajbir Singh Dalal v. Chaudhari Devi Lal University, Sirsa (2008) 9 SCC 284.*

- ii. *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar and another* AIR 1968 SC 786.
- iii. *O.P. Bhalotra and others v. Municipal Corporation of Delhi and others* 1988 LAB.I.C. 634 Delhi High Court.
- iv. *Alok Shankar Pandey vs. Union of India and others* (2007) 3 SCC 545.

7. Per contra, Mr. R.V. Sinha, the learned counsel for the respondent strongly refuted the contentions raised by the learned counsel for the petitioner. The learned counsel for the respondent mainly submits that it was the petitioner himself who had been placing reliance on the case of C.M. Viz so as to draw a parity between two set of cases not only in his main petition but even in his RA No 57/2013 and when the High Court decided W.P. (C) No. 2040/2012 against C.M. Viz then this petitioner filed a fresh RA which has rightly been dismissed by the learned Tribunal with costs after terming the same as an attempt to abuse the process of the Court.

8. We have heard the learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them.

9. Any party approaching the court of law seeking certain reliefs in a case is entitled for a decision on the merits of the case. In a case when the Court has already decided any issue identical with the issue in another W.P.(C) 3347/2014

case before it, the Court may after feeling satisfied as to the similarity of the issue, follow its own view in that case also but where the facts or legal issues are different, certainly the Court shall decide the other case on its own facts and legal position. Shockingly, it was the petitioner himself who in his Writ Petition, being, i.e. OA No. 1491/2012 and in his RA No.57/2013 sought to draw a parallel analogy of his case with the case of C.M. Viz but when the decision in C.M. Viz's case wherein the MCD laid a challenge to the order dated 11.11.2009 was followed in his case by the learned Tribunal in T.A. No.1060/2009, the petitioner moved a fresh RA No.187/2013. Having said this, we cannot be oblivious of the fact that one glaring error which cannot be ignored and which was apparent on the face of the record was that when the learned Tribunal decided the OA preferred by the petitioner on 04.10.2013, at that time the decision of the High Court dated 23.09.2013 had already been passed, and therefore, the decision in the OA of the petitioner could not have been made subject to the outcome of the decision in the case of C.M. Viz where the decision was already given by the High Court. We are surprised that even the MCD failed to apprise the learned Tribunal about the decision given by the High Court dated 23.09.2013 in the case of C.M. Viz. This error can

be rectified only if we remit the matter back to the learned Tribunal so that the learned Tribunal may have the advantage of the order passed by the High Court in W.P. (C) 2040/2012 dated 23.09.2013, but also it may determine the issue of difference between the case of C.M. Viz and that of the petitioner as sought to be made out by the petitioner.

We accordingly, remand the matter back to the learned Tribunal to decide the OA No. 187/2013 preferred by the petitioner on its merits and while doing so the learned Tribunal shall certainly refer to the decision of this Court in the case of C.M. Viz.

Accordingly list this matter before the learned Tribunal on 20.04.2015. Both the parties are directed to appear before the learned Tribunal.

With the above direction, the present Writ Petition is disposed of.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MARCH 27, 2015

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