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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04th September, 2015

+ W.P.(C) 5016/2012 & C.M.10294/2012

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through: Mr.Arun Bhardwaj, Advocate.

versus

BUDH RAM Respondent
Through: Mr.Rajiv Aggarwal, Advocate.

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T
: SUNITA GUPTA, J.

1. This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner challenging the award dated 30.03.2012 passed by the learned Presiding Officer, Industrial Tribunal, Karkardooma, Delhi in ID No.17/2010 whereby the respondent (hereinafter referred to as 'Workman') was held entitled for regularisation to the post of Peon/Helper w.e.f. 04.10.1995 i.e. the date his junior has been regularised.

2. For the purpose of considering the legal contentions urged on behalf of the parties and with a view to find out whether this Court is required to interfere with the impugned award of the Labour Court, the necessary facts are briefly stated hereunder:-

As per the statement of claim filed by the workman before the Industrial Tribunal, he joined the employment of NDMC w.e.f. 04.10.1989 as a Peon and was posted in Hindi Department. He was being

treated as a daily rated/casual/muster roll worker and was being paid wages as fixed and revised from time to time under the Minimum Wages Act by the appropriate government while his counterparts doing identical work were being treated as regular employees and were being paid their salary in proper scale and allowances. They were also enjoying other facilities like uniform, E.L.,C.L., Gazetted/festival/ restricted holidays which were denied to the workman.

3. It is further alleged that the services of the workman were terminated w.e.f. 31.08.1990 without assigning any valid reason. The impugned termination of service was challenged by raising an industrial dispute which was referred for adjudication by the appropriate government to the Labour Court. Vide award dated 07.01.2002 in ID No.1720/1994 passed by the Presiding Officer, Labour Court No. IX, Delhi, an award in favour of the workman was passed by which the termination of services of the workman was held illegal and unjustified and he was held entitled to reinstatement in service with continuity of service with full back wages along with all consequential benefits, either monetary or non-monetary. In consequence of the award the workman was also assigned duties. However the management did not take any steps to regularise the services of the workman in proper pay scale and allowance with retrospective effect w.e.f. 04.10.1989. It was alleged that non-regularisation of service of the workman w.e.f.04.10.1989 in post of Peon/Helper in proper pay scale and allowances and denial of proper salary at par with his regular counterparts on the principle of “Equal Pay for Equal Work” with all arrears is wholly illegal, unjust and mala fide and amounts to unfair labour practice. A demand notice vide communication dated 11.10.2006 was served upon the management but no reply was received. Conciliation proceedings was also initiated but

the same resulted in failure, as such the government referred the dispute to the Tribunal for adjudication in following terms of reference:-

“Whether Sh. Budh Ram s/o Sh. Ram Saran Sharma daily rated/casual/muster roll worker is entitled to be regularized on the post of peon/helper in proper pay-scale and allowance and if so from which date and what directions are necessary in this respect?

Whether Shri Budh Ram son of Shri Ram Saran Sharma is also entitled to wages as is admissible to his regular counter-parts for his daily rated/casual/muster roll employment period and if so what directions are necessary in this respect.”

4. Statement of claim was filed which was disputed by the management on the ground that the workman was appointed as Peon on temporary muster roll basis w.e.f. 04.10.1989 at the rate of Rs.23.25 paise per day. The muster roll services was extended from time to time and last extension was granted to him on 31.08.1990. As such the workman completed 225 days of service on muster roll as Peon. Thereafter his services were discontinued. The workman filed a complaint against NDMC to the Labour Office regarding unfair labour practice. Since the matter could not be settled, as such it was referred to the Labour Court and an award was passed on 07.01.2002 in favour of the workman and against NDMC. In order to implement the said award, the office issued a posting order dated 11.11.2002 whereby the workman was appointed as Helper on TRM basis and posted in PR department. A note dated 04.12.2002 of PR department was received in the office whereby it was intimated that instead of physically joining his duties, the workman had sent his joining report through Central Registry Branch on 03.12.2002 and thereafter did not perform his duties. In the meantime, a notice was also received from the Implementation Cell and copy of posting order dated 11.11.2002 was shown. The Implementation Officer had given the claim amounting to Rs.2,52,531/- on account of back wages w.e.f.

01.09.1990 to 31.08.2002 of the workman. The said amount of claim was paid to the workman. Subsequently on 17.11.2003, Shri Budh Ram submitted a fresh joining report whereby he requested to allow him to resume his duties. A fresh posting order dated 03.12.2003 was issued by the management. He was appointed as Helper on TRM basis with immediate effect and posted in Charak Palika Hospital. Thereafter Budh Ram joined his duties on 10.12.2003. The Implementation Cell again sent a claim of Budh Ram amounting to Rs.41,983/- w.e.f. 01.09.2002 to 09.12.2003 and the amount was paid to the workman. A writ petition was filed by NDMC in this Court against the orders of Implementation Cell regarding payment for the period 11.11.2002 to 09.12.2003 for which the workman did not perform his duties. However, as per the orders of the High Court, Rs.35,762/- was also paid to the workman. The workman also filed a complaint against NDMC before Assistant Labour Commissioner for his reinstatement in service on the post of Peon/Helper in proper pay scale and allowances with retrospective effect from the initial date of his joining i.e. from 04.10.1989 and to pay him entire difference of salary on the principle of equal pay for equal work. However, his claim was not tenable and the Assistant Labour Commissioner conducted the proceedings without any relief to the workman and therefore, the case was closed by the NDMC.

5. The question for consideration before the Industrial Tribunal was whether the workman was entitled to be regularised on the post of Peon/Helper in proper pay scale and allowances and if so, from which date and what directions are necessary in this respect and whether the workman was entitled to wages as is admissible to his regular counterpart?

6. The workman examined himself whereas on behalf of the

management Sh. Tej Prakash, Head Assistant, NDMC was examined as MW1. MW1 in his cross examination admitted that the workman was working with the management w.e.f. 04.10.1989 till date and he was not given either the pay scale or the attendant benefits. He also admitted that the nature of work and working hours of the workman as Peon and his counterparts in regular pay scale and other benefits are not given to this workman. He also admitted that juniors to the workman already stand regularised long back with all attendant benefits including pay scale. He also admitted that juniors to the workman has been regularised w.e.f. 04.10.1995 in the regular pay scale with all other attendant benefits. In view of the same, the learned Industrial Tribunal came to the conclusion that since the junior to the workman has been regularised w.e.f. 04.10.1995, there is no legal hurdle in regularising the workman from the said date. The case of the management was that since the services of the workman were discontinued after completion of 225 days of TMR services, therefore, he cannot be regularised. The Tribunal referred to the award dated 07.01.2002 passed by the Labour Court whereby the workman was granted the relief of reinstatement with all consequential benefits. Thus it was observed that the workman cannot be said to have been discontinued from service. It has also come on record that the back wages were already paid to the workman, as such the workman was held to be entitled for regularisation to the post of Peon/Helper from the date his juniors were regularised i.e. 04.10.1995.

7. As regards claim of workman in respect of wages as admissible to his counterparts, it was observed that in view of the judgment passed by Hon'ble Supreme Court in *State of Haryana and Ors. v. Jasmer Singh and Others*, (1996) 11 SCC 77, he is not entitled to the said relief. The workman being daily rated employee cannot be allowed to claim equal

wages to that of his regular counterparts on the principle of equal pay for equal work. Thus the claim of the workman prior to 04.10.1995 does not survive.

8. It has been contended by learned counsel for the petitioner that the award has been passed by the Industrial Tribunal basically on the ground that juniors to the workman were regularised. However, after his termination w.e.f. 31.08.1990 till he joined his duties on 10.12.2003, he was not in the service of the petitioner and, therefore, cannot seek regularisation. For number of years his working days were nil. The concept of seniority does not come amongst daily wagers. Moreover, although the award for reinstatement was passed on 07.01.2002 but till 10.12.2003 he did not join the duties. Therefore, he was not in continuous service. The mere fact that he was granted back wages does not entitle him to seek regularisation/seniority. Since he did not work during this period, he is not even entitled for any arrears of wages, as such the impugned award is liable to be set aside.

9. On the other hand, learned counsel for the respondent submitted that the effect of passing of the award dated 07.01.2002 by the Labour Court would mean that the workman was in continuous service of the petitioner and it is because of this reason that he was also paid back wages w.e.f. 01.09.1990 to 31.08.2002 and thereafter from 01.09.2002 to 09.12.2003. Thereafter, NDMC challenged the order of the Implementation Cell but without any consequence. Furthermore, reference was made to Rule 77 of Industrial Dispute whereby it is incumbent upon every department to prepare seniority list. Moreover, no plea was taken in the grounds of appeal that no such seniority list has been prepared. Rather MW1 examined by the petitioner admitted that such a seniority list is prepared and maintained. He also admitted that

juniors to the workman were also regularised and, therefore, the Industrial Tribunal was justified in ordering regularisation of the workman w.e.f. 04.10.1995 his junior was regularised. Reliance was placed on ***Umrala Gram Panchayat v. The Secretary, Municipal Employees Union & Ors.***, 2015(4) Scale 334. The counsel also placed on record office order dated 30.03.1995 whereby TMR workers who had completed 750 days muster roll service were taken on regular muster roll. The counsel further submits that it was a fight between two unequals and the workman was compelled to fight for his rights and he had to take legal recourse for seeking relief at every level. As regards plea that the worker did not join duty for two years even after award, it was submitted that after the award was passed in favour of the workman, it was incumbent upon the department to allow him to join duties but that was never done. It was the workman himself who gave the joining report on 03.12.2002 and thereafter when a fresh posting order was issued by the management, then he joined the duties on 10.12.2003. It was further submitted that the impugned award does not suffer from any infirmity. Furthermore reference was made to ***Municipal Corporation of Delhi v. Asha Ram & Anr.***, 117(2005) DLT 63 for referring to the powers of this court for interference in a writ petition under Article 226 of the Constitution of India. Reliance was also placed on ***Bidi, Bidi Leaves'and Tobacco Merchants Association v. The State of Bombay***, AIR 1962 SC 486 for submitting that industrial adjudication under the provisions of the Industrial Disputes Act is given wide powers. An award made in an industrial adjudication may impose new obligation on the employer. Such an award may even alter the terms of employment. Lastly it was submitted that in view of the relief granted to the workman for regularisation, the difference in the arrears be directed to be paid to him along with interest.

10. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

11. It is not in dispute that the respondent joined the employment of the petitioner w.e.f. 04.10.1989 as a peon. He was being treated as a daily rated/casual/muster roll worker. His services were terminated on 31.08.1990. Being aggrieved by his termination from services, he raised an industrial dispute being ID No.1720/1994. Vide award dated 07.01.2002, the termination of services was held to be illegal and unjustified. He was held entitled to the relief of reinstatement with all consequential benefits. The respondent joined duties w.e.f. 10.12.2003 and since then he is working with the petitioner as muster roll employee. Back wages for the period from 01.09.1990 upto 10.11.2002 was paid by the petitioner in compliance of the award dated 07.01.2002. However, for the period from 11.11.2002 till 09.12.2003, the petitioner failed to give back wages to the respondent, as such respondent initiated proceedings u/s 33-c(1) of ID Act 1947 and procured a warrant of attachment for a sum of Rs.35,762/- issued by the Implementation Officer. This warrant of attachment was challenged by the petitioner by preferring writ petition being writ petition No.11592/2004. This writ petition was dismissed vide order dated 14.12.2009 and the respondent workmen was held entitled to the wages for this period amounting to Rs.35,762/-.

12. The sole question for consideration in the instant writ petition is whether the finding of the industrial adjudicator that the respondent is entitled to seek regularisation w.e.f. 04.10.1995 i.e. the date when his juniors were regularised calls for an interference or not. In the writ petition, a plea was taken that the appointment of the respondent was not

as per rules and his engagement was without following the procedure. However, during the course of arguments, learned counsel for the petitioner could not explain as to how the appointment was not according to rules or it was without following the due procedure. Moreover, although a plea was taken that no seniority list was prepared, however this submission is contrary to the testimony of the witness examined by the management who admitted that one combined seniority list of NDMC category of peons is prepared and maintained. The witness also admitted that the respondent was working with the management w.e.f. 04.10.1989. There was no difference in the nature of work and working hours of the workmen and his counter parts. He also admitted that the respondent was not paid the regular pay scale and other benefits as were given to his counter parts. He also admitted that juniors to the workmen have been regularised w.e.f. 04.10.1995 in the regular pay scale with all other attending benefits. The only ground due to which the services of workmen could not be regularised was due to his termination by the management. So far as termination by the management is concerned, the same was held to be illegal by an award dated 07.01.2002 passed by the Labour Court and the respondent was held to be entitled for reinstatement with all consequential benefits. That being so, once the termination of the services of the workmen was held illegal, that cannot furnish a ground to deny him the benefit of regularisation which was granted to his juniors.

13. During the course of arguments, learned counsel for the petitioner tried to show that the case of the respondent stands on a different footing than that of his junior. However, in order to justify his submission, no seniority list of the other employees was placed on record and absolutely no cogent ground could be given as to how the case of the respondent stands on a different footing than that of his junior who was regularised

w.e.f. 04.10.1995.

14. The other plea taken by learned counsel for the petitioner was that although by award dated 07.01.2002, the respondent was ordered to be reinstated in service, however, he joined the duties only on 10.12.2003, therefore, he cannot be said to be in continuous service. The petitioner cannot be allowed to take advantage of this fact, inasmuch as by virtue of the award a direction was given to the petitioner to reinstate the respondent in service. There is nothing on record to show that immediately after passing of the award any posting order was issued by the petitioner calling upon the workman to join the services of the petitioner. Rather as per the averments made before the Labour Court, it was alleged by the petitioner that a posting order dated 11.11.2002 was issued whereby the respondent was appointed as helper on TMR basis and posted in PR department. Thereafter a note dated 04.12.2002 of PR department was received whereby it was intimated that instead of physically joining his duties, the respondent sent his joining report through Central Registry Branch on 03.12.2003. Thereafter a fresh posting order dated 03.12.2003 was issued by the management and the respondent joined his duties on 10.12.2003. Under the circumstances, the entire blame cannot be put upon the respondent in not joining the duties. Even the petitioner management was not prompt enough to issue the posting order and call upon the respondent to join his duties. Under the circumstances, there is no justification for interfering in the award passed by the Industrial Tribunal whereby the respondent was directed to be regularised w.e.f. 04.10.1995 when his junior was regularised.

15. Moreover, parameters for interference in an industrial award is well settled and no case has been set up by the petitioner so as to warrant any interference by this Court under Article 226 of the Constitution of

India. In *Asha Ram* (supra) relied upon by learned counsel for the respondent, the jurisdiction of this court while dealing with an industrial award has been laid down as under:-

"6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:- (a) The Supreme Court in para 5 in *Sadhu Ram v. Delhi Transport Corporation*, AIR 1984 SC 1967 observed :

" nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer."

(b) The Supreme Court in *Harbans Lal v. Jag Mohan* (1985) 4 SCC 333:

"The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power."

(c) The Supreme Court in *Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.*, 1988 (Supp.) SCC 768 in para 10 observed:

".....The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis."

(d) The Hon'ble Supreme Court in *Sudhoo v. M/s Haji Lal Mohd. Biri Works and Ors.* 1990 Lab. I.C. 1538 in para 8 ruled :

"8. We have gone through the statements of two witnesses produced by the appellant before the authority. The findings of the authority are based on appreciation of evidence produced by the parties before the authority. We do not agree with the High Court that the finding recorded by authority are based on no evidence. The High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence."

Thus in accordance with the above position of law no interference in findings of facts recorded by the Tribunal is called for. In any event, the petitioner having died and the monetary benefits accruing under the award as per the above claim being confined limited up to the date of the death and payable to his widow, no interference is called for even otherwise under Article 226 of the Constitution."

16. In view of the aforesaid decisions, it is clear that in exercise of its powers under Section 226 of the Constitution, the Courts are not to act as an appellate court. An award can only be set aside if it is based on no evidence or contrary to any substantive law or it is in violation of principles of natural justice. The present award does not fall in any of these categories. The award is based on the evidence produced before the Trial Court.

17. As regards submission of learned counsel for the respondent that the respondent be also paid difference in arrears along with interest on regularisation, the same is not tenable. ***Prem Ram v. Managing Director, Uttarakhand Pey Jal and Nirman Nigam and Ors.***, 2015(6) SCALE 569 was a case where appeal was filed against the order dismissing the appellant's appeal for regularisation of his services and to release consequential benefits with arrears. In that case also, the appellant was a daily wager in erstwhile Uttar Pradesh Pey Jal and Nirman Nigam some time in the year 1988. Nine years later, his services were terminated in February 1997. The termination when assailed by the appellant before the Labour Court was set aside with a direction to the

respondent to reinstate the appellant with 50% back wages and continuity of service. The writ petition filed by the respondent-Jal Nigam who is the successor-in-interest of the erstwhile Uttar Pradesh Pey Jal and Nirman Nigam against the award made by the Labour Court succeeded only in part and to the extent that the back wages was deleted from the award by the Labour Court. Pursuant to the award, the appellant was allowed to rejoin as a daily wager and to serve the respondent Jal Nigam till the date of his superannuation upon completion of 60 years of age. In the year 2008, the appellant filed writ petition before the High Court directing the respondent to regularise his services w.e.f. 01.07.2003 and to release consequential benefits in his favour on the ground that other daily wagers who were junior to him and appointed after the year 1988 have been regularised in service. The appellant could not merely because of an illegal order of termination of his services be deprived of that benefit. It was contended that the termination order having been set aside by the Labour Court, which order was affirmed by the High Court with continuity of his service, there was no reason for denial of benefits that would have flowed to him but for the order of termination, especially when such benefits were extended to other similarly situated contemporaries and juniors of the appellant.

18. The writ petition was dismissed. Appeal before the Division Bench was also dismissed. Thereafter SLP was filed before Hon'ble Supreme Court and it was observed that there was no denying the fact that the persons who were junior to the appellant, having been engaged much later than him stole a march over him in terms of regularisation in service while the appellant remained embroiled in litigation over what was eventually found to be an illegal termination of his service. There was no impediment in directing regularisation of service of the appellant

on the analogy of the juniors with effect from the date his juniors were regularised and for the release of all retiral benefits in his favour on that basis by treating him to be in continuous service till the date of his superannuation. **However, the appellant was held not entitled to claim any amount towards arrears of salary based on such regularisation.**

19. *Amarkant Rai v. State of Bihar & Ors*, 2015 VIII AD (S.C) 528 again was a case where the appellant who was working as a daily wager night guard in the University was directed to be regularised retrospectively but was not granted monetary benefit for the said period.

20. Following these judgments, the workman is not entitled for difference in arrears of wages w.e.f. 04.10.1995, the date when he has been ordered to be regularised till 10.12.2003 when he joined his duties.

21. For the above reasons, I hereby dismiss the petition. The writ petition and pending applications, if any, stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 04, 2015

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