

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

% *Judgment Reserved on : September 09, 2015*
Judgment Delivered on : September 11, 2015

+ **LPA 719/2014**

SHRI NANAK CHANDAppellant
Represented by: Mr.Rajiv Agarwal, Advocate with
Mr.Sachin Kumar, Advocate

versus

NEW DELHI MUNICIPAL COUNCILRespondent
Represented by: Mr.Vivek B.Saharya, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Nanak Chand is aggrieved by the impugned order dated May 27, 2014 passed by the learned Single Judge disposing of W.P.(C) No.6933/2003 filed by the New Delhi Municipal Council which laid a challenge to an award dated December 13, 2001 passed by the Labour Court in ID No.203/1994.

2. Noting that Nanak Chand had worked as a Muster Roll Worker from February 02, 1987 to April 16, 1988, during which period Nanak Chand was being paid remuneration in sum of ₹450/- per month, the learned Single Judge has taken note of the fact that Nanak Chand had been able to receive ₹2,73,824/- in execution proceedings initiated by him to enforce the award, which reinstated him in service with full back

wages. The learned Single Judge has, while modifying the award, directed the New Delhi Municipal Council to pay a further sum of ₹50,000/- to Nanak Chand. Cost has been imposed upon Nanak Chand in sum of ₹10,000/- for not disclosing to the Court that he had, in the execution proceedings, already recovered ₹2,73,824/-.

3. Grievance of Nanak Chand in the appeal is that the learned Single Judge has misapplied the ratio of law declared by the Supreme Court in the decision reported as 2014 (2) SCALE 399 *Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of FCI & Anr.* Learned counsel for the appellant urged that the caveat lodged in the said decision, though noted by the learned Single Judge, has been overlooked. The caveat lodged in the decision reads as under:-

“We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was restored to as unfair labour practice or in violation of the principle of last come first go viz.while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

4. As per the award dated December 13, 2001 the defence of the counsel that Nanak Chand voluntarily abandoned duties has been held to be not established. As a consequence it has been held that assertion by Nanak Chand that his service was illegally terminated on April 16, 1988 stands established. Because Nanak Chand had worked for more than 240 days in the immediate year preceding the date of his termination and no

retrenchment compensation being paid, resulting in Section 25F of the ID Act, 1947 being violated, the termination of Nanak Chand's service has been held to be illegal by the award. Nanak Chand has been directed to reinstated in service with full back wages and continuity in service.

5. The Learned Labour Court has noted the contention of the authorized representative of the workman i.e. Nanak Chand as under:-

“So far as issue No.2 is concerned, the onus was upon the management to prove the fact whether the workman has left the job on his own. Ld.AR for the management has argued that workman had left the job on his own on 15.4.88 and had never come to require about the same thereafter. In this regard, he has drawn my attention is the affidavit filed by Sh.B.S.Sharma, MW1 wherein para No.4, he has stated that workman had never come forward enquiring about this work after 15.4.88. He has submitted that management had never terminated the services of the workman.

The Ld.AR for the workman on the other hand has argued that workman had never left the job on his own. He has submitted that it is admitted by the management in their own affidavit that they had not terminated the services of the workman. In the absence of any termination, it cannot be assumed that he had left the job on his own. The management was supposed to conduct an enquiry. They have not issued any letter to the workman nor conducted any enquiry and therefore, the alleged termination of the services of the workman are illegal. In this regard, he has also drawn my attention to cross-examination of the said witness. The said witness has categorically stated that no letter was written to the workman calling upon him to resume his duty. No charge sheet was issued to the workman. No enquiry was ever conducted against him.”

6. Thereafter, the learned Labour Court has decided the issue as under:-

“In the present case, the services of the workman have been dispensed with on the ground that he has abandoned the job on his own. The management had not issued any letter to the workman and neither held any enquiry in this regard. Our own

Hon'ble Delhi High Court in a case reported as MCD Vs. Sukhbir Singh & Ors. 1994 LLR Page 332 has held that if employment of the workman was not for a specific period, the denial of the employment has to be in accordance with the law and in case of abandonment, the workman's services could not have been terminated without holding an enquiry against him. In that case also the corporation had terminated the services of the claimant who was working on daily wages with the MCD from 11.11.1980. It was alleged that he had worked from that date till 17.3.1982 and thereafter, had not turned up for work. The workman had contended that he was working as a Mali/Beldar since 11.11.1980 as muster roll employee. It was held by the court that it was wrong on the part of the MCD to presume that workman had abandoned the job on his own. The relevant observation in para 5 are as under:-

“Once it is held that the employment of the first respondent was not for a specific period, the Court shall have to proceed that the denial of employment to the first respondent by the corporation for whatever reason shall have to be only according to law. If he had abandoned the employment certainly that could have been a ground for holding an enquiry against him and passing appropriate order. That has not been done in the instant case. In the circumstances, I do not find any merit in the writ petition. It is dismissed.”

Perusal of the above judgment thus, reveals that services of the workman could only have been terminated in accordance with law and that is by holding a proper domestic enquiry.”

7. As noted hereinabove in paragraph 2, the award has been modified by the learned Single Judge while allowing W.P.(C) No.6933/2003 filed by the New Delhi Municipal Council and what has weighed with the learned Single Judge is that Nanak Chand had worked with the Council for roughly over one year. He joined on February 02, 1987 and his services were terminated on April 16, 1988. The compensation which

Nanak Chand has received would be ₹2,73,824/- which he received during execution of the award and further sum of ₹50,000/- directed to be paid by the learned Single Judge.

8. Grievance of the appellant that the learned Single Judge has overlooked the law declared, and as noted hereinabove in paragraph 3, in *Hari Nandan Prasad*'s case. is ill-founded because there is no evidence that the counsel resorted to unfair labour practice by retrenching a daily wage person while retaining junior and thereby gave the benefit of regularization to the junior and denied the same to a senior.

9. That apart, we find that the reasoning of the learned Labour Court in favour of Nanak Chand that it is not a case of voluntary abandonment of service is perverse. The learned Labour Court overlooked the fact, which has been even overlooked by the learned Single Judge, that Nanak Chand sought reference of the dispute in late 1992 (exact day and month not emerging from the record) and the reference was made on July 08, 1994. Had the question being posed: What was Nanak Chand doing from April 16, 1988 till late 1992? The answer would have been that he was gainfully employed somewhere else and probably when he lost that gainful employment he took a chance by seeking reference of a dispute.

10. The reasoning of the Labour Court that the management had neither issued a letter to the workman nor held an inquiry overlooks that in a case of casual employment the implied condition would be that the workman must report for duty and if he does not, the employer is not to go about chasing the employee. Thus, the Council was under no obligation to send any letter to Nanak Chand whose employment was casual to report for duty. The normal course of conduct of Nanak Chand, if his services were indeed illegally terminated, would be to cry at the top of his voice and send legal notices to the employer. He did not do so. It

has to be kept in mind that as per Nanak Chand he was a member of the Municipal Employees Union, and we find that the Union has espoused his cause. He never approached the office bearers of the Union. In any case, we cannot overlook the fact that Nanak Chand raised the demand in late 1992 when admittedly he had not worked as a Muster Roll Worker from April 16, 1988. It may be true that the Council has not challenged the impugned decision passed by the learned Single Judge, but in granting relief to the appellant this Bench can certainly look into, and for that matter would be obliged to look into, all relevant facts and circumstances.

11. It thus boils down to this. Nanak Chand last worked till April 16, 1988. He raised the issue of his service being terminated in late 1992 i.e. after more than 4 years. The department took the stand that Nanak Chand voluntarily abandoned the job. The learned Labour Court held against the Council applying wrong principles of law. The normal course of conduct of an employee whose service is terminated would be to shout and cry at the top of his voice. Nanak Chand did not do so. Admittedly he is a member of the Union which espoused his cause. He never approached the Union. Further, assuming termination was illegal, Nanak Chand had worked only for a year and two months. There is no evidence led before the Labour Court that a person junior was retained and made permanent. Thus, in view of the fact that Nanak Chand had already recovered ₹2,73,824/- further compensation in sum of ₹50,000/- in lieu of reinstatement is a fair decision. In any case, we are of the opinion that evidence suggest that Nanak Chand voluntarily abandoned the job and it would be irrelevant even if it was proved that a person junior to Nanak Chand who continued to serve as a Muster Roll Employee was later on regularized in service.

12. We find no merit in the appeal which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 11, 2015
mamta