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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9685/2016**
SUDESH

..... Petitioner

Through Ms. Meenu Mainee, Adv.

versus

COMMISSIONER NDMC AND ANR

..... Respondent

Through Mr. Mukesh Gupta, standing counsel
for NDMC/R-1

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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21.10.2016

1. Having heard counsel for the petitioner, we are not inclined to interfere with the impugned order dated 25.08.2015 whereby OA No.3581/2012 has been dismissed.
2. The petitioner herein was given compassionate appointment after death of her husband in the year 1999 as a daily wager (*safaiwala*).
3. The Tribunal in the impugned order has referred to the following facets that impressed them not to accept the prayer of the petitioner and in holding that the delay in approaching the Tribunal was not satisfactorily explained and should not be condoned. For the sake of completeness, we would reproduce paragraph 15 of the impugned order, which reads:-

“15. We have given our anxious consideration to the facts of the present case. In the present case, certain points come out starkly:

1) That the respondents are right in pointing out that there has been a delay of more than two years, as the applicant filed this OA on 04.10.2012 while the impugned order of her removal was passed on 23.07.2010, around two years and three months earlier.

2) That the applicant has herself admitted in her rejoinder that there is discrepancy between the Annexure A/3 in Hindi version at page 15 of the OA and its English translation at page 16 of the OA, in which Medical Certificate and Fitness were added, which are not there in the original Hindi document filed by her.

3) Even though, the applicant has claimed that she was ill from 05.06.2009 to 21.07.2010, however, Annexure A/2 of her own O.A. discloses that she had reported for duty on 09.06.2009 after getting a recommendation letter from the Joint Secretary, RSCDP, and even delivered the same to the Office Superintendent, Rohini Zone, which is against her submission that she was ill during that period.

4. Even during the same period of her claimed illness, as per the Medical Certificate at Annexure A/4, which says that she was suffering from Anxiety Neurosis, she had not approached any Municipal Authority s Hospital, and had only approached a Private Doctor, running a Private Nursing Home, who had issued the Medical Certificate on 21.07.2010, stating that she is able to join her duty from 22.07.2010, but no details of the treatment given to her by the Doctor has been given or mentioned in the Medical Certificate as produced by the applicant herself.

5. Further, even after she was certified by that Private Doctor to be able to join duty on 22.07.2010, the Annexure A/5 shows that she had reported for duty on

23.06.2011, much after the order of her removal from service had been passed.”

4. It is not disputed and admitted before us that the petitioner had not reported for duty from 05.06.2009 to 21.07.2010. This fact came to the notice of the respondents on examination and verification of the bio-metric attendance record. The petitioner had not applied for, and was not granted leave.

5. The petitioner had claimed that she was unwell. The petitioner had, before the tribunal, produced for the first time a medical certificate of Dr. Pravin Kumar dated 21.07.2010. We have examined the said certificate. It states that the petitioner was suffering from anxiety neurosis and was under his treatment. As noticed above, this certificated was filed and relied upon in the original application filed in 2012. Earlier prescription slips, if any, were not filed. In the undated letter written by the petitioner seeking reinstatement, she had claimed being ill from 05.06.2009 to 21.07.2010 and having recovered she would like to rejoin the duty. However, in the English translation of the said letter, it was wrongly and falsely averred that the medical certificate about fitness had been obtained.

6. The petitioner has contended that she was reinstated and allowed to join duty vide office note dated 23.06.2011. We have examined the said office note. It records that the petitioner was removed from service and was now willing to join duty. It was proposed or suggested that she might be allowed to join duty. It was not recorded that she would be allowed to join duty. The suggestion

was not agreed to and accepted for the next note records that the petitioner would be paid a duty pay, i.e. the arrears from the first date of appointment up to the date duly verified by the accounts branch. This order cannot be construed as an order or a direction given by office of the respondent permitting the petitioner to join the duty. It was recorded that the arrears of pay, if any, due may be verified and paid accordingly by the accounts branch from the date the petitioner was appointed till the date she had worked.

7. We have referred to the said disturbing facts, with reference to the prayer of the petitioner seeking condonation of delay of over one year in approaching the Tribunal as the termination order was passed on 23.07.2010 and the OA was filed on 04.10.2012. The reason for the delay was certainly not illness, but rather complete indifference and lack of desire to work. There were lapses and even an attempt to make wrong assertions. Writing of the letter and the office note dated 23.06.2011 would not furnish and give further cause of action, but would rather show that the petitioner was unconcerned, did not care, and was not interested in her job. She harboured the belief that having secured a government job she could approach the Court or Tribunal at any time. To overlook such conduct and condone delay of over a year would be unjustified.

8. There was not only delay in approaching the Tribunal, but also delay in filing the present writ petition. The impugned order is dated 25.08.2015. The present writ petition is filed after nearly a year on 20.07.2016. Given the aforesaid facts, repeated failures reflecting the petitioner's lack of interest in working as daily wager (*safaiwala*),

we do not see any reason and cause to interfere and condone the delay in approaching the Tribunal and the laches and delay in filing the writ petition. In these circumstances, we are not inclined to entertain the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 21, 2016
VLD