

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

Date of Decision: April 25, 2017

+ **W.P.(C) 4793/2013**
MANOJ KUMAR Petitioner
Through: Mr. Pankaj Tripathi, Advocate

versus

M/S CENTRAL AYURVEDIC DRUG STORE & ANR
.....Respondents
Through: Mr. Anuj Aggarwal, ASC with Ms.
Niti Jain, Advocate and Dr. Yogita
Munjal, Deputy Director,
Directorate of Ayush

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned Award of 8th March, 2013 holds that no Inquiry was conducted before terminating the service of petitioner, who was employed as part-time sweeper with respondent-Management in the year 2003. Due to attendance register being stolen away, the attendance chart provided by petitioner was relied upon and in the absence of any notice prior to termination, the removal of petitioner from job of a part-time Sweeper is held to be illegal. Instead of reinstatement, trial court while relying upon decisions *Rameshwar Dayal v. Presiding Officer Labour Court No.VI, Delhi & Anr.*, 2007 (3) LLJ 729, *Kishan Lal & Ors. V. Govt. of NCT of Delhi & Ors.*, 2007 VI AD (Delhi) 13, *PGI of Medical Education & Research, Chandigarh v. Raj Kumar & Ors.*, AIR 2001 SC

479 and *Indian Railway Construction Company Ltd. V. Ajay Kumar*, AIR 2003 SC 1843, has granted compensation of ₹50,000/- in lieu of reinstatement, back wages, etc. and the said compensation is to carry simple interest at the rate of 8% *per annum* from the date of Award till the realization.

In this petition, petitioner seeks reinstatement instead of compensation granted. The facts as already noticed in the impugned Award need no reproduction. Suffice to note that petitioner employed as part-time sweeper on 1st March, 2013 at initial salary of ₹950/- per month and his service was dispensed with on 25th January, 2010 and at that time, he was drawing fixed salary of ₹1,200/- per month. It is relevant to note that petitioner used to work three hours a day at fixed salary of ₹1,200/- per month, revised w.e.f. 1st March, 2007 and his appointment was purely on part-time basis and that respondent-Management is not a commercial establishment.

Learned counsel for petitioner informs that respondent-Management has paid the compensation amount of ₹50,000/- to petitioner in October, 2013. On merits, it is submitted by petitioner's counsel that petitioner had worked with respondent-Management for almost seven years and has now crossed the age of 40 years and is unable to get any worthwhile employment and so, petitioner ought to be reinstated as petitioner is ready to refund the compensation amount of ₹50,000/- received by him.

Learned counsel for respondent on instructions from Dr. Yogita Munjal, Deputy Director, Directorate of Ayush submits that there is no

permanent post of Sweeper with respondent-Management and only at three stand alone centres, part-time sweepers have been already employed and there is no vacancy since the year 2010, till date. It is submitted that on co-located basis the sweepers employed by the Medical Officer of the main Medical Centres are providing cleaning facilities at the Ayurveda Units of respondents. So, it is submitted that reinstatement of petitioner is neither justified on facts nor is permissible as respondent's drug store is now co-located with the main Medical Centre for the last few years.

In rebuttal, learned counsel for petitioner submits that cleanliness is an integral part of medical field and for the proper custody of the medicines, cleanliness cannot be compromised and so, regular sweeper ought to be employed. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that petitioner has now crossed the age of 40 years and so, it would not justify his reinstatement as his employment was purely on part-time basis and because there is no vacancy to reinstate him. In such a case, grant of compensation in lieu of reinstatement is considered appropriate.

Considering the fact that respondent-Management is an Ayurvedic Drug Store, which is not located at a prominent place, I find that compensation of ₹50,000/- granted to petitioner is reasonable in the facts and circumstances of this case as Supreme Court in a somewhat similar case i.e. *Haryana Tourism Corporation Ltd. V. Fakir Chand and Others*, (2003) 8 SCC 248, has granted compensation in lieu of reinstatement and the quantum of compensation granted is also more or less the same.

In light of the aforesaid, finding no substance in this petition, it is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 25, 2017

S

