

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

Date of Decision: April 18, 2017

+ **W.P.(C) 7102/2012 & C.M.18363/2012**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through: Mr. Vivek B. Saharya, Additonal
Standing Counsel

versus

HARISH KUMAR Respondent

Through: Mr. Atul T.N., Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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A Reference was made to the Tribunal as to whether non-employment of respondent-workman by petitioner-Management is legal and justified and the said Reference has been answered vide impugned Award of 3rd November, 2011 with direction to petitioner-Management to take respondent-workman on its regular Muster Roll as per his seniority in pursuance to its Circular of 11th April, 1996 (Ex.WW1/7). The undisputed facts, as noted in the impugned Award, are as under: -

“It is not disputed between the parties that vide order dated 11.4.96 passed by Director (Personnel) of the management, a seniority list of those workmen who had completed 500 days upto 31.8.95 was displayed for taking them on regular MR and that the name of claimant was mentioned at serial no. 42 of the list and that the claimant was not taken on regular MR although several other persons junior to him as per the list were taken.

It is submitted by the claimant in his claim that he sent a demand notice to the management on 18.9.2002 but the management did not send any reply. The claimant has sought reinstatement with full back wages and regularization of service.”

The stand taken by petitioner-Management was that as per the Recruitment Rules, respondent-workman was not entitled to be put on regular Muster Roll as he did not fulfill the pre-conditions for being put on Muster Roll. Petitioner had relied upon its undated Resolution (Ex.MW1/2) which requires that a workman ought to have been completed 500 days or more upto 31st December, 2000.

The challenge to impugned Award in this petition is on the ground that respondent-workman is not qualified to be put on regular Muster Roll as he is not eligible as per the applicable Resolution (Ex.MW1/2) and the Tribunal has erred in discarding this Resolution (Ex.MW1/2) by summarily brushing it aside as irrelevant. So, it is submitted by learned counsel for petitioner that in view of Resolution (Ex.MW1/2), respondent-workman is not entitled to be put on regular Muster Roll. It is pointed out by learned counsel for petitioner that the Circular of 11th April, 1996 (Ex.WW1/7) relied upon by the Tribunal is not applicable as it was not approved by the Competent Authority of petitioner-Management and this Circular of the year 1996 is to be read in conjunction with the Resolution (Ex.MW1/2). Thus, it is submitted by learned counsel for petitioner that impugned Award deserves to be set aside.

On the other hand, learned counsel for respondent-workman

supports impugned Award and submits that respondent-workman had worked for more than 500 days and it is so evident from petitioner's list of *Beldars* (Ex.WW1/10). It is pointed out by respondent's counsel that 129 *Beldars* have been regularized while excluding respondent-workman although he figures at serial number 78 in the said list of *Beldars*. Lastly, it is submitted by respondent's counsel that in a case of similarly placed *Beldars*, Award directing absorption on regular Muster Roll has been implemented whereas respondent-workman herein has been singled out. So, it is submitted that impugned Award deserves to be upheld and this petition ought to be dismissed. Nothing else is urged on behalf of either side.

Upon hearing learned counsel for the parties and on perusal of impugned Award and the evidence on record, I find that the Tribunal has rightly discarded petitioner's Resolution (Ex.MW1/2) for the reason that it requires that a *Beldar* must have worked during the years 1995 and 1997. It is a matter of record that respondent-workman had worked upto 1st May, 1992 and as per the reply filed by petitioner before the Tribunal, he had worked for a period of 621 days though not continuously. The first requirement of petitioner's Resolution of having completed 500 days or more as on 31st December, 1998 could not have been possibly satisfied by respondent-workman as he was on temporary Muster Roll upto 1st May, 1992.

In the considered opinion of this Court, the Tribunal has rightly relied upon petitioner's Circular of 11th April, 1996 (Ex.WW1/7) as there is nothing on record to show that it required the approval of petitioner's

Management. It is being so said for the reason that petitioner had failed to place on record any document to show as to what was the applicable Circular/ Resolution in the year 1992 as that would be the relevant year to govern the case in hand. However, considering the fact that respondent-workman had belatedly approached the Tribunal after delay of one decade, this Court finds that the Tribunal has erred in directing that respondent-workman to be put on regular Muster Roll. So, respondent cannot claim parity with other *beldars*.

During the course of hearing, this Court was informed by respondent's counsel that by now, respondent-workman is aged more than 55 years. In such a situation, it is deemed appropriate to modify the impugned Award to the extent of substituting the relief granted with direction to petitioner to pay the compensation to respondent-workman.

In the facts and circumstances of this case, it is directed that respondent-workman be compensated by paying him ₹50,000/- in lieu of putting respondent-workman on regular Muster Roll. Eight weeks' time is granted to petitioner to pay the compensation of ₹50,000/- to respondent-workman.

With aforesaid directions, this petition and the application are disposed of while modifying the impugned Award in above terms. Copy of this order be given *dasti* to petitioner's counsel to ensure compliance of this judgment.

(SUNIL GAUR)
JUDGE

APRIL 18, 2017

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