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

+ LPA 411/2017 & CM APPL. 21097-21098/2017

NORTH DELHI MUNICIPAL CORPORATION

..... Appellant

Through: Mr. D.S. Mehandru, Adv.

versus

SURENDER KUMAR AND ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
29.05.2017

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1. C.M. No. 21097/2017 has been preferred to seek condonation of 291 days delay in filing the appeal. C.M. No. 21098/2017 has been filed to seek condonation of 197 days delay in re-filing the appeal. The appeal itself is directed against the judgment of the learned Single Judge in W.P. (C.) No.7426/2001 preferred by the appellant to assail the award dated 10.03.1998 passed by the Presiding Officer, Labour Court VII, Tis Hazari, Delhi in ID No.331/1988.

2. By the impugned judgment, the said writ petition of the appellant has been dismissed by the learned Single Judge and the award rendered by the Labour Court has been upheld. The respondent workman was working as

beldar/ mali w.e.f. 26.08.1978. His grievance was that he had not been permitted to rejoin the duties on 12.12.1985 and, consequently, he raised an industrial dispute. The reference made to the Labour Court for adjudication was in the following terms:

“Whether Shri Surender Kumar has abandoned his service or the management has refused his duties illegally and/ or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect?”.

3. Before the Labour Court, the claim of the respondent was that he had joined the management of the petitioner on 26.08.1978 as a casual/ daily rated/ muster roll beldar/ mali in the Garden Department, Civil Line Zone, Delhi. He claimed that his services were regularised w.e.f. 01.04.1992. In January 1985, he was posted in the Patel Chest Nursery. He was on leave on 12.01.1985. On the same night, he was arrested by the police in a criminal case registered at PS Vijay Nagar, Ghaziabad under Section 395/ 412/307/325 IPC. He remained in the custody till 11.02.1985 and was thereafter released on bail. He claimed that on 12.02.1985, when he reported for work he was not allowed to work by his superiors stating that till he is acquitted in the criminal case, he shall not be permitted to rejoin his duties.

4. After waiting for some time, he served a notice of demand on 02.11.1987 on the management claiming reinstatement. The management did not reinstate him and vide letter dated 18.02.1988 called upon the respondent to explain as to why he has absented from his duty. He sent a reply on 25.02.1998 stating that he was not permitted to join the duties on account of the criminal case. He claimed that the refusal by the appellant to

permit him to rejoin duties tantamounted to illegal termination which was contrary to Section 25F, G and H of the Industrial Disputes Act (the Act). He also claimed that he had not been paid the wages for 12 days for the month of January 1985. The appellant disputed the claim of the respondent workman. While not disputing that he was a casual/ daily rated/ muster roll beldar/ mali in the Garden Department, it was denied that he had been regularised w.e.f. 01.04.1992 as a mali. The appellant denied that the superior officers informed the respondent that he would not be allowed to rejoin duties till he is acquitted in the criminal case.

5. The workman examined himself and he was also cross examined by the management. The management, however, did not produce any evidence. On 16.01.1998, the management was proceeded ex-parte. The Labour Court rendered its award. It held that there was no *animus desserendi* on the part of the workman. He could not join his duties due to his arrest in the criminal case. After he was released on bail, he reported for duties but was not allowed to resume his duties till he was acquitted in the criminal case. He even sent a notice of demand dated 02.01.1987 (Ex. WW1/A), which was received by the management.

6. The management then issued the memo dated 18.02.1988, for the first time calling upon the respondent to join his duties within three days and to explain his long absence. The tribunal found that the management did not clarify as to where the respondent was expected to rejoin his duties, and also did not explain as to why it had not sent a notice to the respondent – if he did not join his duties after 12.02.1985, earlier.

7. The tribunal, accordingly, directed reinstatement of the respondent.

However, the claim for back wages was granted only from 02.11.1987 – when the demand notice was served by the respondent on the appellant.

8. The learned Single Judge has upheld the impugned award and while doing so, she has examined the case law on the aspect of abandonment of service since that was the only issue arising in the reference made to the Labour Court. We find that in the impugned judgment, the learned Single Judge has relied upon *G.T. Lad & Ors. v. Chemical and Fibres of India Ltd.*, (1979) 1 SCC 590 and applied the said decision to the facts of the present case. The learned Single Judge has also held that the writ petition itself was filed belatedly inasmuch, as, the impugned award was rendered by the Labour Court on 10.03.1998, whereas the writ petition was preferred in 2001.

9. There was another reason for dismissal of the writ petition, which was the fact that there was suppression of material facts. The respondent had brought it to the notice of the court that even before the filing of the writ petition, the application moved by the respondent under Section 33C(1) of the Act for recovery of back wages had been allowed, and the back wages had already been recovered for the period 02.11.1987 to July 2003, and the application for recovery of back wages for the subsequent period i.e. 01.08.2003 to 30.06.2004 was pending. These aspects were not disclosed in the writ petition by the appellant.

10. The submission of counsel for the appellant is that even though the respondent was allegedly not permitted to rejoin his duties on 12.01.1985, he sent the demand notice only on 02.11.1987.

11. We do not find merit in this submission of the appellant for the reason

that the respondent clearly stated that he was not permitted to rejoin his duties when he reported for the same on 12.01.1985 on the ground that till he is acquitted in the criminal case, he shall not be permitted rejoin his duties. Pertinently, the back wages have not been granted till the period 02.11.1987 and, therefore, the Labour Court has balanced the equities and rights of the parties. The Labour Court was the fact finding Tribunal. The Labour Court had recorded evidence of the respondent and the appellant was proceeded exparte. The Tribunal had appreciated the evidence led before it and, on appreciation of the evidence, the finding was returned that the respondent had not abandoned his service. In judicial review, the said finding could not have been assailed by seeking re-appreciation of the evidence. It was not a case of “no-evidence”, or consideration of extraneous evidence/ matters, or ignorance of evidence led before the Labour Court. It was also not a case of a patent illegality by the Labour Court. In these circumstances, the learned Single Judge rightly did not interfere with the award of the Labour Court. The writ petition was also belated and there was suppression of material facts as found by the learned Single Judge.

12. Having considered the impugned judgment, we are of the view that there is no merit in the present petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 29, 2017

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