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

Date of decision: 20.02.2019

+ W.P.(C) 1739/2019 & C.M. Nos.8086-8087/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Biji Rajesh, Adv.

versus

RAJBIR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/North Delhi Municipal Corporation impugns the Award dated 24.03.2018 passed by the Industrial Tribunal, Dwarka Courts in ID No.181/16. Under the said award, the Industrial Tribunal has directed the petitioner/management to regularise the respondent/workman from the date when other similarly situated persons, who had been appointed on muster rolls basis alongwith the respondent, were regularised.

2. The facts as emerge from the record are that the respondent had joined the erstwhile Municipal Corporation as a Mali/Beldar on 27.01.1984 in which post he continued to work till 24.03.1985. As the respondent was not permitted to work after 24.03.1985 and was instead terminated from service,

he raised an industrial dispute seeking re-instatement and regularisation of service along with back wages from the initial date of his appointment, i.e., 27.01.1984. The said industrial dispute was referred to the Labour Court, which vide its Award dated 19.09.2002, came to a conclusion that the services of the respondent had been wrongly terminated and that the actions of the petitioner/management were in violation of Sections 25(F) and 25(G) of the Industrial Disputes Act, 1947. However, in view of the fact that the respondent/workman had raised a grievance regarding his termination only after 6 years, i.e., on 04.04.1991, the Tribunal held that he was not entitled to any wages for the said period, but had granted him reinstatement with continuity of service.

3. The petitioner/management had challenged the aforesaid award before this Court by way of *W.P.(C) No.5510/2003*. During the pendency of the writ petition itself, the respondent workman, in compliance of the award, was reinstated on 17.03.2006, and was also granted back wages w.e.f 04.04.1991. In these circumstances, the writ petition was disposed of as having become infructuous.

4. After his reinstatement the respondent/workman raised an industrial dispute again, claiming regularisation from the date of his initial joining with grant of pay scale as well as the differential amount of salary.

5. The petitioner/management opposed the respondents claim for regularization and stated that the respondent, having been reinstated w.e.f 17.03.2006, he could not claim parity with those workmen who were appointed on 27.01.1984. On the other hand, the respondent/workman contested that once his termination by the petitioner/management w.e.f. 24.03.1985 was found to be illegal and unjustified and he was directed to be

reinstated in service with continuity of service,, he had to be treated in service at par with all those workmen who had been engaged on muster roll w.e.f. 27.01.1984. He had been granted continuity of service from the said date and merely because payment of back wages was restricted w.e.f. 04.04.1991, he could not be deprived parity with the workmen appointed on the same day as him. Ultimately, the petitioner's contention did not find favour with the learned Labour Court who, after examining the Award dated 19.09.2002, came to a categorical conclusion that the respondent had to be treated in service w.e.f. 27.01.1984 itself.

6. In view of the admitted position that all other workmen, similarly engaged on 27.01.1984, had already been regularised w.e.f. 01.04.1989, the learned Labour Court vide its impugned Award has directed the petitioner to regularise the services of the respondent also w.e.f. 01.04.1984.

7. The present writ petition has been filed by the North Delhi Municipal Corporation impugning the said Award. Ms.Biji Rajesh, learned counsel for the petitioner submits that the learned Labour Court, by presuming that the respondent has been reinstated in service with effect from 27.01.1984, has completely misread the earlier award dated 19.09.2002. She states that a bare perusal of the aforesaid Award shows that the respondent was granted continuity of service only w.e.f. 04.04.1991 and, therefore, the finding in the impugned Award that the respondent had been reinstated or was entitled to be treated in continuous service w.e.f. 27.01.1984 is wholly perverse and is liable to be set aside. She submits that the respondent was only granted reinstatement from 04.01.1991 and therefore the direction under the impugned Award to grant him regularisation at par with those employees who were in employment w.e.f. 27.01.1984 was

totally unwarranted. She, therefore, prays that the impugned award be stayed.

8. I have considered the submissions of the learned counsel for the petitioner and perused the record, including the Award dated 19.09.2002, the interpretation whereof is the only bone of contention between the parties. While the learned Labour Court has found that the respondent was entitled to be treated in service w.e.f. 27.01.1984, the petitioner's contention is that the respondent having been granted back wages w.e.f. 04.04.1991, his services can be counted only from the said date. Having carefully examined the aforesaid Award dated 19.09.2002, I am unable to agree with the submissions of the learned counsel for the petitioner. In fact, a bare perusal of the said Award shows that on account of the delay on the respondent's part in raising the industrial dispute the learned Labour Court, while granting him continuity of service, had merely restricted the payment of back wages to him from 04.04.1991 i.e., the date on which the demand notice was issued by him, instead of granting the same from the date of his termination i.e, 24.03.1985. In my view, the learned Labour Court while restricting the payment of back wages, did not at all direct that the respondent's service was only to be counted from 04.04.1991, as is sought to be contended by the learned counsel for the petitioner. In this regard, it may be appropriate to refer to the findings of the learned Labour Court in the Award dated 19.09.2002, which read as under:-

"17. In the light of above discussion and considering the action of management in terminating the services of the workman in an illegal and unjustified manner, the workman is entitled for his reinstatement.

18. *As regards question of payment of back wages is concerned, there is nothing on record to show that workman was gainfully employed during the intervening period but as per his own case the workman had remained silent during the period of termination of his service i.e. w.e.f. 25.3.85 till the date of issuing of demand notice i.e. 4.4.91. Accordingly I am of the opinion that workman concerned is not entitled to any wage during this period. However, the workman is entitled for his reinstatement with continuity of service with full back wages w.e.f. 4.4.1991 onwards. Award is passed. Reference answered accordingly.”*

9. In fact, what emerges is that once the learned Labour Court came to a categorical conclusion that the action of the petitioner/management in terminating the services of the respondent/workman was illegal and unjustified, it had while directing his reinstatement, granted him continuity of service which necessarily had to be from the date of his illegal termination. There is absolutely nothing in the aforesaid Award dated 19.09.2002 to show that the learned Labour Court had restricted continuity of service granted to the respondent from the same date on which he was granted back wages.

10. For the aforesaid reasons, I find absolutely no infirmity in the conclusion arrived at by the Court under its impugned Award that the respondent had been granted continuity of service from date of his initial appointment i.e. 27.01.1984. In my view, the learned Labour Court has rightly appreciated the effect of the earlier Award dated 19.09.2002 and has therefore directed regularization of the respondent from the date on which similarly placed workmen, who had been engaged on 27.01.1984, were regularized.

11. For the aforementioned reasons, I find no perversity or infirmity in the

impugned Award that warrants interference under the exercise of the writ jurisdiction of this Court.

12. The writ petition, being meritless, is dismissed alongwith the pending application.

(REKHA PALLI)
JUDGE

FEBRUARY 20, 2019
gm

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