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

+ W.P.(C) 5918/2018

SH. RAM KISHAN Petitioner

Through: Mr. S.K. Walia, Advocate.

versus

GOVT. OF NCT OF DELHI THROUGH ITS CHIEF SECRETARY
AND ORS. Respondents

Through: Mr. V. Balaji, Panel Counsel,
GNCTD (Services) with
Ms.Sripradha Krishnan, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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19.02.2019

1. The petitioner assails the order dated 26.02.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in O.A. No.820/2013, insofar as the Tribunal has restricted the relief granted to the petitioner by directing his reinstatement with all consequential benefits, and observing that he would be entitled to arrears only from 06.03.2013 i.e. the date on which he filed the Original Application, in the peculiar facts of the case.

2. The petitioner was serving as a regular sweeper with the respondent-Lok Nayak Jai Prakash Narayan Hospital (LNJP Hospital). He remained unauthorisedly absent continuously for long periods and consequently vide office order No.385 dated 13.01.1999 his services were terminated without

holding a disciplinary inquiry against him to establish his misconduct. The reason given by the respondent was that his whereabouts were not available. The petitioner raised an Industrial dispute after making representations on 27.02.1998 and 08.03.2009. The Labour Court made the Award dated 12.05.2009 holding that it had no jurisdiction in the matter, and the jurisdiction lay with the Central Administrative Tribunal. The petitioner approached this Court by preferring W.P.(C) 5590/2010, which was dismissed vide order dated 05.02.2013 with liberty to him to approach the Tribunal. Only thereafter, the petitioner preferred the aforesaid Original Application.

3. The Tribunal held that the petitioner's services could not be terminated without holding an appropriate inquiry and, consequently, reinstated him in service with all consequential benefits. However, his claim for arrears was restricted from the date of the filing of the Original Application i.e. 06.03.2013 in the facts and circumstances of the case.

4. The submission of learned counsel for the petitioner is that the petitioner's termination was completely illegal, and the petitioner has been agitating against the same ever since his termination. He submits that the petitioner cannot be denied arrears of pay in the aforesaid circumstances, since he was ready to serve the respondent-LNJP Hospital but the respondent illegally kept him away from service.

5. When this petition came up before the Court for the first time on 29.05.2018, the petitioner was called upon to file an affidavit to explain the inordinate delay in filing the writ petition to assail the impugned order. However, the same has not been filed. Thus, the petition is liable to be dismissed for delay and laches. In any event, we have considered the

submissions of the learned counsel for the petitioner on merits.

6. The impugned order itself shows that while passing the order dated 13.01.1999, the respondents reproduced the numerous occasions on which the petitioner had remained unauthorisedly absent between 01.06.1996 and 01.12.1997. He also absented w.e.f. 06.02.1998. Notice was also published in the newspaper 'Hindustan' (Hindi) on 08.06.1998, asking him to join his duties within 10 days, but he did not respond.

7. The petitioner invoked his remedy before the wrong Forum. Vide order dated 12.05.2009, he was informed that the CAT has jurisdiction. Yet, he preferred W.P.(C) 5590/2010, which was also dismissed on 05.02.2013. Only thereafter, he preferred the Original Application.

8. In these circumstances, since the petitioner had not rendered any service in the past, in our view, the Tribunal was completely justified in restricting the grant of arrears only from 06.03.2013 i.e. the date on which the Original Application was filed.

9. The lapse on the part of the respondent in not following the procedure— to hold an inquiry, cannot be a reason for the petitioner to make capital out of it, and profit from it. In a case like the present, where the allegation is of unauthorised absence, the inquiry could have been directed to be held by the Tribunal while passing the order dated 26.02.2016, since it would be a matter of record whether the petitioner was on unauthorised leave, and whether he reported for work, or not. If an enquiry were to be held even after lapse of so much time, the petitioner may not be able to plead prejudice on account of passage of time. If proceeded against, the petitioner may lose everything. The Tribunal has, however, sought to balance the equities by directing reinstatement of the petitioner, and by not

expressly permitting the respondents to hold the inquiry in terms of the disciplinary Rules and, at the same time, restricting the grant of arrears from the date of filing of the Original Application. In our view, the order passed by the Tribunal is balanced and does not call for interference.

Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 19, 2019

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