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

% **Date of Decision: 30.01.2019**

+ W.P.(C) 6350/2016

SHRI BIR PAL AND ORS Petitioners

Through Mr. Sanjoy Ghose, Adv.

versus

COMMISSIONER MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Ms. Namrata Mukim, Adv. for
R-1/North DMC.

Kumar Rajesh Singh, Standing
Counsel with Ms. Punam Singh, Adv.
for R-2/EDMC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE PRATEEK JALAN

VIPIN SANGHI, J. (ORAL)

1. The petitioners assail the order dated 07.01.2016 passed by the Central Administrative Tribunal (CAT) in OA No.172/2012. They also assail the order dated 08.02.2016 passed in RA No. 24/2016. Both the OA and the RA had been rejected by the Tribunal primarily on the ground of delay, laches and bar of limitation.

2. The petitioners had approached the Tribunal with the prayer that the

respondents be directed to regularize their services on the higher posts of Electric Motor Driver (EDM), Wireman Gr.-I and Wireman Gr.-II, from the dates on which they were regularized as Electric Beldars. They also sought consequential benefits.

3. The petitioners, who were originally engaged on Muster Roll were later regularized as Electric Beldars on various dates during the period 1980 to 1990. Some of them were later promoted as Electric Motor Driver. The Tribunal held that the OA was barred by limitation, since the OA was preferred in the year 2012 i.e. after a period of about 22 years when they were regularized as Electric Beldars. There was an inordinate delay in filing the OA and the same had not been explained by the petitioners.

4. The submission of Mr. Ghose, learned counsel for the petitioners is that the Supreme Court had rendered its decision in ***State of UP vs. Arvind Kumar Srivastava***, on 17.10.2014. In the said decision, the Supreme Court considered the issue with regard to delayed filing of claims. After examining the case law, the legal principles set out by the Supreme Court in the said decision were the following :

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters

more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before

the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”(emphasis supplied)

5. Mr. Ghose submits that the present is a case covered by the exception set out in para 22.3 above. He submits that the decisions rendered by this Court *inter alia* in Civil Writ Petition No. 1373/1980 **Lalit Mohan vs. MCD etc.** decided on 04.02.1987; the decision in **Roshan Lal vs. Commissioner, MCD** WP (C) 3953/1992 decided on 15.02.2004 are the decisions *in rem*, which the respondents should have implemented on their own without awaiting for the persons like the petitioners to approach the Court. He further points out that on several occasions, the MCD implemented the industrial awards passed in favour of the individual employees and in this regard attention is drawn to order dated 13.10.2006 passed in respect of Puran Chand; dated 20.11.2006 in respect of Chander Kiran; dated 21.07.2010 in respect of Ram Kanwar; dated 28.07.2010 in respect of Harender Kumar; and, dated 05.09.2007 in respect of Anil Kumar. He further submits that these awards have been implemented even as late as in the year 2010.

6. We do not consider it necessary to go into the issue whether the decisions relied upon by Mr. Ghose could be considered as judgments *in rem* or not. Even if we were to grant it to the petitioners that the said decisions were the decisions *in rem*, that did not justify the petitioners to not seek implementation of those judgments in case they were aggrieved by the

fact that they were regularized only as Electric Beldars, and not as Wireman Gr.-I or Wireman Gr.-II, as claimed by them.

7. Mr. Ghose points out that the respondents had issued the circular dated 28.04.2006 on the subject of implementation on post to post regularization policy dated 11.03.1980. The final list of employees who were to be regularized as per the policy was circulated, wherein the names of the petitioners were included at serial Nos. 14, 19, 31, 48, 57, 62 and 71.

8. On the other hand, learned counsel for the respondents pointed out that the said list was withdrawn and a fresh final seniority list was issued on 18.06.2008. Learned counsel points out that regularization in the posts was dependent on the fulfillment of the eligibility criteria prescribed in the Recruitment Rules for the said posts. She submits that the petitioners did not fulfill the eligibility criteria to seek regularization on the higher posts of Wireman Gr.-I and Wireman Gr.-II.

9. The purpose of prescribing the period of limitation, amongst others, is to save the prejudice that opposite party would face, if asked to answer a claim after decades of arising of the cause of action. In an organization such as the MCD, which has also undergone the process of trifurcation in the year 2012, it goes without saying that it would be extremely difficult, if not impossible, for anyone to meet or deal with the claims made by the petitioners with regard to their qualifications at the relevant time, as also with regard to the number of sanctioned posts which were then available against which regularization was undertaken in the different posts such as Wireman Gr.-I and Wireman Gr.-II and Electric Beldars. Had the petitioners raised their grievance with regard to their being regularized only as Electric

Beldars, and not as Wireman Gr.-I or Wireman Gr.-II at the relevant point of time, the respondents would have been able to meet the said claim and justify their decisions. Expecting them to now do so, when the records would not be available, in our view, would not be fair. The respondent Municipal Corporation would be put to serious prejudice as they would not have the wherewithal to deal with the petitioners claims.

10. Mr. Ghose submits that in view of the delay, the relief sought by the petitioners could be curtailed. He submits that the petitioners could be denied arrears of pay but their pension could be fixed and they could be granted arrears of pension for a period of three years prior to their approaching the Tribunal. We cannot accede to this request, because to succeed even to that extent, they must first establish that they were wrongly regularized as Beldars, and they were entitled to be regularized as Wireman Gr.-I or Wireman Gr.-II. We do not find any merit in the writ petition. Dismissed.

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VIPIN SANGHI, J

PRATEEK JALAN, J

JANUARY 30, 2019

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