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

+ **W.P.(C) 8307/2017**

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Petitioner

Through: Mr.R.V. Sinha, Mr.Amit Sinha and
Mr.Vaibhav Pratap Singh, Advocates.

versus

PREMA RAI

..... Respondent

Through: Mr.T.K. Tiwari, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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15.11.2019

Dr. S. Muralidhar, J.:

1. The short point involved in the present petition, which challenges an order dated 3rd June, 2016 passed by the Central Administrative Tribunal (CAT) in OA No.425/2012 filed by the Respondent, is whether the said O.A., filed as it was against the North Delhi Municipal Corporation ('North DMC'), was at all maintainable.

2. The Respondent is the wife of a former employee of the North DMC, which was earlier known as the Municipal Corporation of Delhi ('MCD'). Her husband had been appointed to the post of Junior Engineer (Civil) on an ad hoc basis on 6th March, 1987 for a period of 89 days. The Respondent's husband continued in service till the date of his death on 15th April, 2010.

3. Although he had submitted an application for regularisation, that could not be considered on account of certain departmental proceedings initiated against him and which were finally dropped on 9th September, 1997. Even by the time of his death, his plea for regularisation had not been considered.

4. The Respondent's husband died on 15th April, 2010, leaving behind the Respondent and two children.

5. It is in those circumstances that in 2012, the Respondent filed the aforementioned OA No.425/2012 in the CAT seeking the following reliefs:

“(a) Direct the respondent to regularize the services of the husband of the applicant from the date when the husband of the applicant has completed 240 days in a year with all consequential benefits arising out from the said regularization i.e. salary, promotion, ACP, retire benefits, pension etc.

(b) Direct the respondent to pay the entire amount of Medical Bills which had been spent by the applicant to give the treatment to Sh. Gorakh Nath Rai.

(c) Award costs of the proceedings; and

(d) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

6. In the reply filed before the CAT, a preliminary objection was indeed taken by the Petitioners about maintainability of the O.A. It was pointed out that the Slum and JJ Department, in which the Respondent's husband had been employed, was taken over by the Government of National Capital Territory of Delhi ('GNCTD') and re-designated as the Delhi Urban Shelter

Improvement Board ('DUSIB'), which came into being as a result of the enactment of the Delhi Urban Shelter Improvement Board Act, 2010 (DUSIB Act) and which became operational on 1st July, 2010.

7. One of the issues framed by the CAT in the impugned order was whether it has the jurisdiction to entertain the OA. The CAT noted that the erstwhile MCD had been trifurcated into the North DMC, the South DMC and the East DMC by virtue of the Delhi Municipal Corporation (Amendment Act, 2011) and that those three DMCs were subject to the jurisdiction of the CAT. It considered the claim of the Respondent to be not against the DUSIB which, "did not exist at the time of his husband's death" but against the North DMC which had been impleaded as a party. Therefore, it rejected the preliminary objection. The CAT then proceeded in the impugned order on merits and granted the relief of regularisation of the service of the Respondent's husband and all other consequential reliefs.

8. This Court has heard learned counsel for the parties and is of the view that the CAT erred in rejecting the preliminary objection of the Petitioner as to the maintainability of the aforementioned application before it. The reasons are as follows.

9. That the erstwhile Slum and JJ wing of the MCD got re-designated as DUSIB with effect from 1st July, 2010 i.e. the date of coming into effect of the DUSIB Act, is not in dispute. To understand the position as regards the transfer of services of the employees and the assets and liabilities of the erstwhile Slum and JJ wing of MCD, it is the DUSIB Act that has to be looked into. The fact that the MCD may have been trifurcated is hardly

relevant for this purpose. This aspect appears to have been lost sight of by the CAT. Sections 30 and 31 of the DUSIB Act are relevant in this context and read as under:

“30. Taking over the Services of officers and employees.- In administering the provisions of this Act, the Board may with the prior approval of the Government, take over the services of the officers and other employees of any existing organisation of the Government or any other local authority with such designations as the Board may determine and they shall hold office for the same tenure, and at the same remuneration and on same terms and conditions of service, as they would have held if the Board had not been established and shall continue to do so until such tenure, remuneration and terms and conditions are duly altered by the Board:

Provided that the tenure, remuneration and terms and conditions of service of any such officer or employee shall not be altered to his disadvantage without the previous approval of the Government:

Provided further that any services rendered by any such officer or employee before the establishment of the Board shall be deemed to be services rendered under the Board:

Provided also that the Board may employ any such officer or other employee in the discharge of such functions under this Act as the Board may think proper and every such officer or other employee shall discharge those functions accordingly.

31. Taking over the assets and liabilities.- On and from the commencement of this Act, the Board may take over such assets and liabilities, both movable and immovable, of any existing organisation of the Government or any local authority as may be specified by the Government or by the Central Government, as the case may be, by an order issued in this behalf, on such terms as may be specified in such order.”

10. In terms of the second proviso to Section 30, the services rendered by an employee, who served in the Slum and JJ wing of the MCD, would be deemed to be the services rendered at the DUSIB. That apart, under Section 31 all the assets and liabilities of the Slum and JJ wing are taken over subject to a notification in that regard having to be issued by the Government of the NCT of Delhi.

11. The Court has been shown a copy of the Notification dated 30th August, 2010 issued by the Lieutenant Governor of the NCT of Delhi under Section 31 of the DUSIB Act which, “grants approval to take over all the assets and liabilities, both, movable and immovable in possession of Slum and JJ Department of the Municipal Corporation of Delhi on ‘as is where is’ basis by the Delhi Urban Shelter Improvement Board with immediate effect.” It is clear from the terms of the above notification that any unresolved claim of a former employee of the Slum and JJ wing of the MCD would now have to be made against DUSIB.

12. In present case, with the Respondent having approached the CAT only in 2012, long after the coming into effect of the DUSIB Act and after the issuance of the aforementioned notification, the question of the Respondent maintaining a claim against North DMC did not arise. The claim had necessarily to be maintained against DUSIB. The admitted position is that DUSIB is not one of the notified organisations subject to the jurisdiction of the CAT in terms of the Administrative Tribunals Act, 1995. In that view of the matter, the claim against the DUSIB could not have been maintained before the CAT at all.

13. In that view of the legal position, the OA No.425/2012 filed by the Respondent before the CAT was, in fact, required to be dismissed on the ground of non-maintainability. For the aforementioned reasons the impugned order dated 3rd June, 2016 of the CAT is hereby set aside.

14. The Court, however, would not deprive the Respondent of the other remedy that is available to her for proceeding against DUSIB, in accordance with law. In the event that an objection is raised by DUSIB in those proceedings regarding delay and laches, it will be open to the Respondent to bring to the notice of the forum concerned, of the pendency of the present proceedings, including her application before the CAT, for the purposes of explaining such delay.

15. The petition is accordingly allowed in the above terms. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 15, 2019/pa