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

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Decided on: 18.02.2020

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W.P.(C) 1877/2020, CM APPL. 6600/2020 & CM APPL. 6601/2020

EAST DELHI MUNICIPAL CORPORATION THROUGH: ITS

COMMISSIONER

..... Petitioner

Through: Mr. Kumar Rajesh Singh, Standing
Counsel with Ms. Punam Singh,
Advocate.

versus

SANJAY UPADHYAY

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order dated 27.09.2019 passed by the learned Labour Court in LCA No. 48/2016 (Old LCA No. 51 of 2013), directing the petitioner to pay the workman-respondent monies for a certain period in terms of para 11 thereof. Its rationale for doing so is as under:

"10. ISSUE No. 1

"To what amount, if any, the claimant is entitled to recover from the management ? OPW"

Onus to prove this issue was upon the workman. The claimant has claimed payment 2uid (sic) Sept. 2-12 to 28th Oct. 2015 and has submitted the estimate of Rs. 11,55,340.46 (Rupees Eleven Lakh Fifty Five Thousand Three Hundred Forty

and paise Forty Six). However, the claimant as witness WW- 1 has admitted in his cross-examination:

'It is correct that I have not worked with the Management w.e.f. September 2012 to October 2015. (vol. The Management did not allow me to work.). I made several complaints to the Deputy Commissioner Shahdra North Zone, Delhi, in this regard. I was permitted to resume my work on 29.10.2015 and since, I am getting salary on tune."

The management witness Sh. Akhilesh Kumar (Asstt. Engineer (E&M)-II, EDMC Deihi-i 10096) has deposed that the workman is a regular employee and his services are governed by the CCS Rules. It is further deposed that the workman was suspended vide order dated 17.06.2009 vide office order No. 1297/Ac with RDA Major Penalty and reinstated later on. The workman was charge-sheeted vide No.281 dated 26/08/1996 and this time also he remained absent from the duty without prior intimation to the management and no joining report was given by the workman to the management.

It is the case of the management that the workman was not paid salary since the month of Sept. 2012 because he neither filled the joining report nor submitted his fitness certificate. The workman was asked to file a proper application for his period of absence but the workman did not do so. It will be pertinent to note that the workman was reinstated and allowed to join his duties w.e.f. 29.10.2015 on his furnishing of Affidavit regarding his non-involvement in any criminal activities I FIR etc. and also regarding his non-employment in any Govt. / Semi Govt. department.

The manage-EDMC (sic) has placed a letter dated 27.11.2015 with No. EE(Auto)I Shd./EDMC/2015/1 106 vide which it has been mentioned that Sh. Saanjay Upadhyay had already been transferred and received to the office of Central Workshop Jhandewalan an LPC has already been sent to AO

central workshop therefore no record I documents of Sh. Sanjay Upadhyay were available with the EDMC office. By adducing this letter the management-herein has shown that no further efforts were made / on its part to call for the record. Be that as it may. The onus to prove its assertion had laid on the management which it failed to discharge.

The workman on the other hand has been able to show that he had written various communications to the management from time to time regarding his leave and subsequent joining. Detailed explanation was given by the workman therein in the following letters:

- 1. Ex. WW-1/A (OSR)- Letter with the receiving dated 08.10.2012. It also shows the receiving vis-a-vis the other the officials;*
- 2. Ex. WW-1/B (OSR) - Letter with the receiving dated 07.11.2012;*
- 3. Ex. WW-1IC (OSR) - Letter regarding no action on the previous letters dated 08.10.2012; 07.11.2012*
- 4. Ex. WW-1/D (OSR) - RTI application;*
- 5. Ex. WW-1/E (OSR) - Letter with the receiving no.232;*
- 6. Ex. WW-1IF (OSR) – Legal Notice.*

During the cross-examination the witness MW-1 (Sh. Akhilesh Kumar - Asst. Engineer (E&M)-II EDMC has admitted:

".... It is correct that the log sheet is maintained for the workman in EDMC and I verify it every day. it is correct that the log sheet dated 26-9-2012 bears the signature of workman. Vol. That the signatures of the workman are unauthorized and without permission / intimation to the department. It is correct that I was posted as Junior Engineer at EDMC in 2012 and the workman are required to submit their application for leave o JE. Vol. I did not receive any leave application / intimation from the workman It is correct that if the workman goes on

leave the AE processes the case for further action against the workman and all the proceedings are done in writing...'

In the present case the management-EDMC has not produced any record in writing of any action taken against the workman and kept the workman away from duty (by not letting him re-join) for three years Sept. 2012 till Oct. 2015. Thus the issue No.1 is decided in favour of the workman and against the management-herein.”

2. What emanates from the preceding discussion is that the petitioner itself had kept the workman-respondent away from his work, by not letting him rejoin for three years i.e. from September 2012 to October 2015. The petitioner's choosing to do so is unexplained. It would, therefore, be liable for payments to the workman as per law as directed in the impugned order. It is not the case of the petitioner that the workman did not present himself for work. The latter's various letters to the petitioner testify to his repeated efforts to report to work and to his entitlement to his just remuneration.
3. This petition raises no reason for interference with the impugned order. It is without merit and is accordingly dismissed, alongwith pending applications.

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NAJMI WAZIRI, J

FEBRUARY 18, 2020

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