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

Reserved on: 20th August, 2020.

Date of decision: 9th October, 2020.

+ **W.P.(C) 12808/2019 & CM APPL.52309/2019**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through: Mr. Nirvikar Verma, Advocate.

versus

HARI RAM TIWARI Respondent

Through: Mr. Hari Ram Tiwari, Respondent in person along with Ms. Sandhya, his daughter and Mr. Mohan, his neighbour.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The judgment is pronounced through video-conferencing.
2. The present petition has been filed under Article 226 of the Constitution of India challenging two orders passed by the Labour Court dated 27th April, 2019 and 12th September, 2019, updated on 9th October, 2019. Mr. Nirvikar Verma, ld. counsel appears for the New Delhi Municipal Council (*hereinafter*, “NDMC”) and the Respondent appears in person along with Ms. Sandhya, his daughter and Mr. Mohan, his neighbour.

Brief Facts

3. The brief background to this petition is that the Respondent – Mr. Hari Ram Tiwari (*hereinafter*, “workman”) was working as a Pharmacist in the NDMC. A daily diary entry (*hereinafter*, “DD entry”) was made on 3rd April, 2007 by Mr. Satish Singh, Sub-Inspector, PS, Moti Nagar, who was part of the police patrol party, that the workman was seen participating in an election campaign for his wife – Mrs. Raj Laxmi, a candidate of ward no.97, Kirti

Nagar from Political Party “*All India Forward Block*”. The workman was accompanied by one Mr. P.N. Dwivedi who claims to be an advocate. Pursuant to the DD entry, photographs were allegedly taken of Mr. Tiwari making a speech at his wife’s campaign. An intimation letter was sent by SI Satish Singh on 6th April, 2007 to the Secretary, NDMC requesting disciplinary action against the workman. The said intimation letter informed the NDMC that Mr. Tiwari was addressing a public meeting by wearing a party logo on his clothes and was actively participating in the electioneering process. According to the police report, since Mr. Tiwari was a government servant, the incident was reported.

4. Pursuant to this intimation by the police, a charge memo was issued on 24th July, 2007 against Mr. Tiwari. In the said charge memo, attention was drawn to Rule 14 of the CCS (CCA) Rules, 1965 and Rule 20 of the CCS (Conduct) Rules, 1964 and the workman was asked to respond to the same. Along with the charge memo, the documents forwarded by the police were also given to the workman. Thereafter, the inquiry commenced.

5. The inquiry culminated in the inquiry report dated 5th September, 2008 by which the Inquiry Officer held that the charges against the workman stood proved beyond doubt. After the inquiry report was submitted, the workman was provided with a copy of the same. The workman then submitted his reply and was also given a hearing on 18th November, 2008. The Disciplinary Authority i.e. the Chairman, NDMC compulsorily retired the workman on 16th December, 2008 and an office order to this effect was issued on 23rd December, 2008. The office order reads as under:

“Under orders of the Chairman/Disciplinary Authority, NDMC dated 16.12.2008, a major

penalty of 'compulsory retirement from Municipal Service' is imposed upon Sh. Hari Ram Tiwari, Pharmacist.

This is with reference to the major penalty proceedings initiated against him vide Memorandum No. 29/CH/Vig./Imp./IOV-II (M)/2007 dated 24.7.2007, his defence statement dated 1.9.2007, finding of the Inquiring Authority, his submission dated 25.10.2008 against the findings of the Inquiring Authority and the submissions made by him during the course of the personal hearing before the Chairman on 18.11.2008 in the matter.

(Philip Bara)
Director (Vigilance)"

6. On 13th January, 2009, the workman filed a statement of claim under S.10 (4A) of the Industrial Disputes Act, 1947 before the Labour Court, challenging the order dated 16th December, 2008 as well as the office order dated 23rd December, 2008. On 27th April, 2019, the departmental inquiry initiated by NDMC against the workman was held as being vitiated, by the Labour Court, on the ground that no fair and proper inquiry was conducted. During arguments, the authorized representative of NDMC prayed that NDMC be permitted to prove the charges against the workman before Court and a date to argue the same was provided. However, on 12th September, 2019, the Labour Court held that NDMC cannot be granted an opportunity to lead evidence to prove the charges against the workman after the preliminary issue of domestic enquiry has been held against the NDMC. Furthermore, the punishment of termination of services of the workman with effect from 23rd December, 2008 was set aside with grant of all the service benefits consisting of pay and other allowances from the date of termination till date of

superannuation and compensation of Rs. 5 lakhs towards harassment, illegal termination and legal cost. Vide order dated 9th October, 2019, typographical errors were corrected in order dated 12th September, 2019.

7. The present petition has been filed on 3rd December, 2019, seeking the setting aside of orders dated 27th April, 2019 and 12th September, 2019 and for order dated 16th December, 2008 to be upheld.

NDMC's Submissions

8. Mr. Verma, Id. counsel for NDMC has taken the Court through the various orders passed by the Inquiry Officer. He submits that despite the workman being given adequate opportunities, the workman chose not to participate fully in the inquiry. He was accordingly given compulsory retirement on 16th December, 2008 and the charges against him were held to be proved.

9. Mr. Verma first relies upon the orders passed by this Court in Crl. MC 2871/2010 titled *Philip Bara & Ors v. State and Ors.* wherein the senior officials of the NDMC sought quashing of an FIR which was lodged against them by the Respondent. In this matter, the High Court made various observations which are relied upon. As per the Id. counsel, the observations made in the order dated 17th January, 2011 establish beyond any doubt that the workman was present during the campaigning of his wife. The said order is also relied upon to argue that the workman himself in his letter dated 23rd May, 2007 admitted that he was present in the election but was only welcoming his friends, relatives and well-wishers. Thus, Id. counsel submits that the plea of the workman that he was not present during the election campaign of his wife is completely false and action is liable to be taken against him in accordance with the judgment of the Supreme Court in *S.P.*

Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853. It is therefore submitted that the proceedings initiated in the Labour Court by the workman are based on a false pretext.

10. Ld. counsel further relies upon the judgment in ***Chairman, Board of Mining Examination & Anr. v. Ramjee, AIR 1997 SC 965*** to argue that there has been complete compliance of the principles of natural justice. He submits that a perusal of the various orders passed by the Inquiry Officer would show that right from the inception, the workman was given an opportunity to participate in the hearing. On multiple occasions, even when the workman did not appear, the Inquiry Officer issued repeated notices to the workman. Reliance is placed on all the orders passed by the Inquiry Officer starting from 12th November, 2007 and finally till the written submissions were taken on record on 15th July, 2008. It is submitted that the workman was present for most of the proceedings. It is also clarified that the Inquiry Officer did not allow Mr. P.N. Dwivedi to assist the workman as the same was contrary to the CCS (CCA) Rules, 1965. Further, as per the DD entry since Mr. Dwivedi was himself present during the campaigning of the workman's wife, he was an interested person who could in any case not represent the workman. The workman was, however, permitted to engage any other municipal servant for his defence.

11. Reliance is placed on orders dated 26th November, 2007, 6th December, 2007, 19th December, 2007, 3rd January, 2008, 7th February, 2008, 22nd February, 2008, 2nd June, 2008, 4th July, 2008 and 15th July, 2008 *inter-alia* to argue that on all these occasions the workman has either been present or repeated notices have been sent to him by the Inquiry Officer. Specific reference is made to order dated 7th February, 2018 as per which even when

the Inquiry Officer wanted to proceed *ex-parte*, the order was communicated to the workman by post. Further, when documents were filed in response to the said notice, the same were taken on record. It is submitted that the Inquiry Officer also gave the workman a chance to cross-examine the witnesses, which was not availed of. Finally, on 15th July, 2008, written submissions were filed by the workman and he refused to sign the order sheet. As per Mr. Verma, all these facts show that the principles of natural justice were completely complied with by the Inquiry Officer, which fact has completely been ignored by the Labour Court.

12. Further to the above arguments, Mr. Nirvikar Verma, Id. counsel raises the following three contentions:

(i) That the NDMC did not have an opportunity to lead evidence on merits to justify the compulsory retirement. In support of this contention, he relies upon the order passed by the Labour Court on 27th April, 2019 wherein it is recorded as under:

“In view of above, it can not be said that inquiry conducted against the claimant was fair, proper and accordance to the principle of natural justice and as such the same is liable to be vitiated. Same stands vitiated accordingly. During the course of arguments, it was prayed by AR of the management that in the event, the inquiry conducted against the claimant is vitiated, the management may be given opportunity to prove the charges against the workman in the Court but no submission was made on behalf of claimant in its rebuttal.

As such, put up on 30.05.2019 for arguments qua the prayer of management for granting of opportunity to prove the charges against the workman in the Court.”

He submits that even if the inquiry has been held to be vitiated, the

management can seek time to lead evidence on merits to justify the termination. He relies on the judgment of the Supreme Court in ***Kurukshetra University v. Prithvi Singh [Civil Appeal No. 3585/2008, dated 15th February, 2018]*** which in turn quotes ***Delhi Cloth & General Mills Co. v. Ludh Budh Singh, 1972(3) SCR 29*** where it has been clearly held that the management has a right to sustain the order by independent evidence and such an opportunity can be availed by the management prior to the proceedings being closed. He submits that despite a request having been made for allowing the management to lead evidence before the closure of the proceedings, the request was not entertained and no evidence on behalf of the management was permitted to be led before the Labour Court. He thus submits that on merits, the NDMC did not have a chance to lead its evidence.

(ii) The second contention is that the CCS (CCA) Rules 1965 applied to all regular employees in view of Resolution No. 29 passed by the NDMC on 23rd November, 1989 which was to come into effect six weeks later. As per the said resolution, the CCS (CCA) Rules 1965 would apply to all officers and employees except casual employees and other categories as mentioned in the resolution. In view thereof, he submits that the contention of the workman that the CCS (CCA) Rules 1965 do not apply to the workman is not valid.

(iii) The third contention of Mr. Verma, Id. counsel is that the present writ petition was filed *inter alia* challenging the award dated 12th September, 2019 on 3rd December, 2019 and was listed before this Court on 10th December, 2019 on which date notice and stay was issued in the petition. The award was published by the concerned Government later i.e., on 24th December, 2019. Id. counsel submits that the publication is merely a consequence of the award by which the award is given effect to. Since the writ petition challenges the

main award itself, the non-filing of a challenge to the publication of the award would not be material inasmuch as if the award is set-aside, the publication would automatically not be valid. He thus submits that the stand of the workman that the non-challenge to the publication constitutes acquiescence or waiver by the Petitioner is not tenable.

Workman's Submissions

13. The Respondent - Mr. Hari Ram Tiwari has appeared with his daughter – Ms. Sandhya and his neighbour – Mr. Mohan to address arguments. The submission is that prior to 9th January, 2012 the CCS (CCA) Rules 1965 were not applicable to NDMC employees. This is pleaded in para 4 of the counter affidavit.

14. It is further submitted that the management chose not to lead any evidence on merits as it was extremely confident of the inquiry proceeding being fair and not vitiated. Since permission was not sought by the management to lead evidence, no further permission can be granted. Reliance is placed on *DTC v. Kartar Singh, 2016 LLR 132* and *Karnataka State Road Transport Corporation v. Lakshmiddevamma, (2001) 5 SCC 433*.

15. It is also submitted that Annexure C submitted by the Inquiry Officer is fake and the acknowledgment has never been given by the workman. The management therefore should not be allowed to lead evidence and the writ petition should be dismissed with heavy costs. Insofar as the photographs are concerned, it is submitted that Mr. D.N. Jha has clearly deposed before the Labour Court that the photographs are his. It is submitted that in fact no election meeting was held on 3rd April, 2007. It is argued that the police officials have admitted that Mr. Tiwari made several complaints and it is only due to vengeance that this diary entry was made and forwarded to NDMC.

16. The workman and his daughter categorically denied making any statement before this Court in *Philip Bara & Ors v State and Ors.* [Crl. MC No. 2871/2010, order dated 17th January, 2011] about the workman's presence in the election campaign. When the Court queried to them that this is recorded in the order, they did not have any response to the same.

17. It is submitted that the workman had an enmity with the Inquiry Officer - Mr. M.M. Kaushik way back in 1990-91 when he was caught in some misconduct and an inquiry was initiated against him at the behest of the workman. Thus, it is submitted that Mr. M.M Kaushik ought not to have been appointed as the Inquiry Officer.

18. It is further submitted that the inquiry proceedings are totally vitiated as the charge memo was not given to the workman. The defence assistant - Mr. P.N. Dwivedi was not permitted to make his submissions, the evidence was not permitted to be taken on record and the workman was also not permitted to sit in the enquiry. In these circumstances, the workman submitted his written statement on 15th July, 2008.

19. It is submitted that four separate inquiries were initiated against the workman and the dates and the times were also clashing. The Inquiry Officers are alleged to have not conducted the inquiry in a transparent and fair manner and repeated harassment is stated to have been caused to the workman. It is argued that the entire inquiry was unfair and accordingly, is not liable to be relied upon.

20. It is submitted that the Chairman of NDMC - Mr. Parimal Rai himself did not recognize the workman and therefore it is quite surprising that Mr. Mumtaz Ali, the policeman recognised the workman in the photograph. It is submitted that this clearly shows that the police had some revengeful attitude

against the workman. Otherwise, there was no reason as to why the police themselves did not register an FIR and why they forwarded a daily diary entry to the NDMC.

21. The workman submits that the management has treated him quite unfairly. No subsistence allowance was paid to him. The administrative heads of the NDMC, the Inquiry Officer and all the witnesses, including the police, have forged and fabricated the photographs and the entire inquiry is nothing but a cock and bull story.

22. Insofar as the election meeting is concerned, it is argued that the “*All India Forward Block*” did not give permission for the meeting being held. Further, the election symbol appearing in the photograph was an ‘Axe’, however, the symbol of the “*All India Forward Block*” is a ‘Lion’. It is submitted that the workman’s wife was an independent candidate and no evidence was led from the election office or the Election Commission to prove that she had contested the said election. Under these circumstances, it is prayed that the writ petition be dismissed and the stay order granted on 10th December, 2019 be vacated.

Discussion and Analysis

23. Before proceeding to decide the issues raised, it would be necessary to have a summary of the proceedings before the Labour Court leading to the impugned orders.

Summary of the Labour Court proceedings and the impugned orders

24. The Labour Court framed the following issues in this matter:

“(i). Whether the claim is not maintainable in view of Preliminary Objection Nos. 1 and 2 taken by the Management in its Written Statement? OPM

- (ii). Whether the Respondent No.2 is not a necessary party to the proceedings? OPM*
(iii). Whether the enquiry conducted by the Management is not fair and proper? OPW
(iv). Whether the services of the Workman/Claimant have been terminated illegally and or unjustifiably by the Management? OPW
(v). Relief.”

25. The workman examined seven witnesses and the Management examined two witnesses. One of the witnesses (WW-2) was Sh. D.N. Jha who claimed that the photographs which were produced in evidence were his and he was supporting the independent candidate – Smt. Raj Laxmi. He also stated that the workman had no connection with the programme. Two other members of the labour union appeared and deposed on behalf of the workman. One of them i.e. WW-4 was not aware of the actual case between the workman and the NDMC. He had also filed a case against the NDMC. WW-5 deposed that he was also a member of the union and had also filed a case against the NDMC. He could not read the contents of his affidavit by way of evidence. Two other witnesses on behalf of the workman produced the summoned record of the conciliation file and the other witness was summoned to prove the award in another case filed by the workman against the NDMC in I.D. No.10/2008.

26. The Management examined two witnesses. The first witness deposed that the claim of the workman is not maintainable in view of Rule 23 of the CCS (CCA) Rules, 1965. The workman had initially been suspended from service on 9th December, 2005. The Review Committee had recommended reinstatement on 23rd April, 2007. The workman joined duty on 17th May, 2007 but was again suspended on 26th November, 2007. Till, finally the major

penalty for compulsory retirement was imposed against him. The witness also deposed that the inquiry was conducted in a free and fair manner by the Inquiry Officer. He also deposed that the workman had filed a criminal complaint against the officers of the NDMC, including the Chairman, and the said criminal complaint was quashed. The Workman had challenged the said order of quashing and vide order dated 12th August, 2011 in SLP (CrI) No.4625/2011, the SLP was dismissed. The witness also confirmed that he was not posted in the Vigilance Department at the relevant time and had not participated in the inquiry proceedings. He was only deposing on the basis of the record. MW2 – the Deputy Director of the Vigilance Department of NDMC proved on record the documents and the day to day proceedings of the inquiry.

27. The Labour Court arrived at the following findings in respect of issue no.3 i.e. whether the inquiry conducted by the management was not fair and proper:

- i) After summarizing the entire evidence, the Labour Court concluded that the inquiry was one-sided and no proper opportunity was given to the workman to lead his evidence or to cross-examine the witnesses. Even the documents were not supplied for the purposes of cross-examination;
- ii) That the Inquiry Officer was not produced;
- iii) That defence witnesses were not permitted to depose;
- iv) That both witnesses on behalf of the Management had no knowledge about the inquiry proceedings;
- v) There was no reason why the Inquiry Officer could not be produced, though he had retired.

vi) The inquiry was not in accordance with the principles of natural justice and hence, the same was vitiated.

28. The impugned order dated 27th April, 2019 concludes with a date being fixed for granting an opportunity to the management to prove the charges against the workman.

29. On 12th September, 2019, the workman moved an application claiming that the Management ought not to be given an opportunity to prove the charges against the workman. The said request was allowed in view of the judgment of the Supreme Court in ***Kurukshetra University v. Prithvi Singh [Civil Appeal No. 3585/2008, decided on 15th February, 2018]***. The termination of the workman was then set aside in the impugned order dated 12th September, 2019 in the following terms:

“The court in order to better appreciate the contentions raised by the parties has gone through the said judgment and more particularly para no.16 of the same and after careful consideration of the same is of the considered opinion that the said judgment instead of helping the case of the management goes against it.

The said para no.16 as reproduced herein above, makes it clear that Hon'ble Supreme Court even in that case has casted duty upon the management to seek an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue regarding domestic enquiry is held against the management and if no such opportunity has been asked at the relevant time of deciding the domestic enquiry, such an opportunity cannot be asked later on.

In these circumstances, in view of the said judgment of Hon'ble Supreme Court relied upon by the management which instead of helping the

management goes against it, the court has no hesitation to hold that the management cannot be granted opportunity to lead evidence to prove the said charges against the workman after the preliminary issue of domestic enquiry has already been held against the management by the Ld. Predecessor of this court.

Accordingly, in these circumstances, the application of the workman stand allowed.

As the issue of domestic enquiry stand already decided against the management by the Ld. Predecessor of this court vide order dated 27 04.2019, necessary consequence which follows is that punishment of termination of services of the workman has to be set aside.

Accordingly, the court hereby set aside punishment of termination of the services of the workman w.e.f. 23.12.2008 but keeping in view the fact that as on date he has already attained the age of superannuation, the relief of reinstatement has become infructuous, the court hereby order that he be granted all the service benefits consisting of pay and other allowances right from the date of termination till the date of his superannuation as if he was never terminated and retired by efflux of time along with a compensation in the sum of Rs.5 lacs towards harassment, illegal termination and legal cost.

In case the management fails to give effect to the award within 30 days from the date of publication of the same, claimant is also entitled to simple interest @9% p.a. on the amount payable to him till the date the same is actually paid.

Ordered accordingly.

File be consigned to Record Rook after completing due formalities.”

30. Vide order dated 9th October, 2019, a typographical error in the original

order dated 12th September, 2019, to the extent that the punishment was not of *termination* but that of *compulsory retirement*, was carried out. It is these orders that are under challenge in the present writ petition.

31. The question that arises before this Court is whether the inquiry was free, fair and transparent and, if so, what is the relief to be granted. Before deciding this question, this Court deems it appropriate to capture the orders passed in a parallel litigation between the workman and the NDMC, which proceedings have attained finality.

Proceedings in Crl. MC No. 2871/2010 titled Philip Bara & Ors v. State and Ors.

32. The facts captured in the brief background show that the final order of compulsory retirement was issued by the Chairman, NDMC on 16th December, 2008. After being retired compulsorily, the workman filed an FIR, being FIR No.252 dated 7th August, 2010 under Sections 167, 195, 196, 323, 355, 506 and 120B read with Section 34 of the IPC, against the Director (Vigilance), NDMC, the Chairman, NDMC and the retired Additional Law Officer (ALO) of NDMC. Various allegations were made against these officials. The Metropolitan Magistrate had registered the FIR on the basis of a complaint filed by the workman.

33. The officials against whom the complaint was filed sought quashing of the said FIR. The petition for quashing of the said FIR was decided by a Id. Single Judge of this Court on 17th January, 2011 in Crl. MC No.2871/2010. In the said judgment, the Id. Single Judge notices that in response to the show cause notice issued by the NDMC on 9th May, 2007, the workman had submitted a reply on 23rd May, 2007 stating as under:

“(d) That I was put under suspension by the NDMC

service w.e.f. 09.12.2005 during the period of above said election and was unemployed w.e.f. 09.12.05 to 16.05.07. During the said period above said election was held and I was just well coming our friends, relatives, well wishers supporters and area persons of society only, being human in nature on the date 03.04.07 where is my fault? Will Sub Inspector Satish Singh pay the expenditure of the said programme which he has ruined, as the lady was unemployed and her companion were supported by society, friends and relatives, same became useless due to negligence of said complainant Sub Inspector.”

34. The Id. Single Judge then came to the conclusion that the stand of the workman that he was not present at the spot campaigning for his wife was false. The finding of the Id. Single Judge reads as under:

“4. From the above reply, it is apparent that respondent no.4 admitted his presence at the election meeting of his wife. A departmental enquiry was conducted and enquiry officer gave his report to the Disciplinary Authority and the Disciplinary Authority accepted the enquiry report and a disciplinary action was taken against respondent no.4 by the disciplinary authority. Respondent no.4 later on filed a complaint before the learned MM that he was not present on the spot and the photograph submitted by the concerned Sub Inspector did not show him present at the dais and he was at home at that time. This stand of respondent no.4 was just reverse to his earlier stand that he was present at the spot but was not on dais. He made the petitioners herein as an accused persons in his complaint before the learned MM alleging that the petitioners had colluded with police Sub Inspector and forged documents to show his presence at the election meeting. He examined one witness who stated that he was not present on the dais. On the basis of this statement, the learned

MM directed registration of an FIR against petitioners and Sub Inspector.

5. I consider that the learned MM acted in gross misuse of his powers. It is settled law that making a person as an accused is not a trivial act and it amounts to serious encroachment on the rights of the person. A person, who has not done any offence, cannot be made as an accused. I fail to understand how Sub Inspector, the Director (Vigilance), Chairman of NDMC, Additional Law Officer or Enquiry Officer could have been made accused in this case. The Enquiry was conducted by the Enquiry Officer and the respondent was at liberty to produce his evidence. An Enquiry Officer acts in a quasi-judicial manner and gives his report. It is his duty to give his finding of facts which may or may not be accepted by the Disciplinary Authority. The Disciplinary Authority if accepts the report of the Enquiry Officer, it has to initiate disciplinary action against the employee and if the employee is aggrieved by the disciplinary action taken against him, he has a right to appeal before the Appellate Authority and if he is still aggrieved from the decision of of appellate authority, he can go to the next higher forum. Under no circumstances, any of the officer of NDMC including Enquiry Officer, Presenting Officer, disciplinary Authority, Chairman of NDMC or the appellate authority who may turn down the appeal can be considered liable for any criminal action. Even if it is presumed that the conclusion arrived at by the Enquiry Officer was not correct, no criminal action can be brought against the Enquiry Officer for his conclusion. I find that the FIR registered against the petitioners was gross misuse of the judicial power by the learned MM. ”

35. Thus, the Id. Single Judge categorically held that the workman had admitted to his presence in the election meeting. He also thereafter tried to

resile from the said statement. This conduct of the workman was frowned upon by the Court which then quashed the proceedings in FIR No.252 dated 7th August, 2010 in CC No.1744/09 titled *Hari Ram Tiwari v. Satish Singh & Ors.* This order of quashing was challenged by the workman in SLP (Crl.) No. 4625/2011 titled *Hari Ram Tiwari v. Philip Bara & Ors.* However, the Supreme Court vide order dated 12th August, 2011 dismissed the SLP. Thus, the finding of the Id. Single Judge that the stand of the workman was contrary to his earlier stand in reply to the show-cause was not interfered with and has attained finality. The labour court while holding that the workman had approached the Supreme Court seeking a stay against the disciplinary action but the said SLP (Crl) 4625/2011 was dismissed on 12th August, 2011, appears to have misunderstood the proceedings before the Supreme Court.

Summary of the Inquiry Proceedings

36. The Inquiry Officer (*hereinafter*, “IO”) was appointed on 15th October, 2007. A perusal of the day to day proceedings before the IO shows that right from inception, the workman was aware of the inquiry being conducted against him. The initial charge memo was issued on 24th July, 2007 to which the workman filed a reply on 1st September, 2007. The workman took various objections against the inquiry proceedings being proceeded further before the IO on 12th November, 2007. The workman had started using the letter heads of the Trade Union of which he was an office bearer, to which objections were taken by the Presenting Officer on behalf of the NDMC. Thereafter, on some hearings, the workman chose not to participate in the proceedings. Since on 6th December, 2007, the workman had not appeared, the IO issued a fresh notice to the workman at his residential address, pursuant to which, the

workman appeared on 19th December, 2007. The workman, however, failed to produce the judgments and the statutes relied upon by him.

37. Detailed proceedings are recorded on 19th December, 2007, 3rd January, 2008 and 7th January, 2008 when the workman had appeared. On 7th February, 2008, when the workman did not appear, notice was issued to him by the IO by registered post and U.P.C. Again, on 22nd February, 2008, the workman did not appear and he was proceeded against *ex-parte*. The said order was sent to the workman by registered post. Service of the said order was also received by the IO. The workman failed to appear on 19th March, 2008 as well, which order was again communicated to the workman. On 5th May, 2008, the workman appeared and participated in the proceedings. He was handed over the statement made by PW-1, but he refused to acknowledge receipt of the same. Accordingly, the IO sent the same to workman again by registered post.

38. On 5th May, 2008, PW-1 i.e. the Head Constable – Sh. Mumtaaz Ali, PS, Moti Nagar, New Delhi made the following statement:

“I am working as Head Constable in Delhi Police. I have been posted as such in Police Station Moti Nagar since 27-07-2006. While patrolling on foot on 03-04-2007 I along with Sh. Satish Singh, Sub Inspector, P.S. Moti Nagar had gone to main Rama Road opposite B- 58. On reaching there we found a stage set by Ms. Raj Lakshmi, a candidate of Ward No97, Kirti Nagar belonging to a political party named All India Forward Block. On the stage three to four persons and Mr. Hari Ram Tiwari, the CO were present there. Sh. Hari Ram Tiwari was addressing the public meeting at the relevant time. Sh. Hari Ram Tiwari was giving speech by using unparliamentary language. Sh. Satish Singh, SI asked Sh. Hari Ram Tiwari and others present there to stop the meeting as they did not have the

permission. Sh. Hari Ram Tiwari and others did not pay any heed to our request and continued to address the public present there. I took photographs of the public meeting. I produce four positive prints of the photograph. I took of the meeting which are marked as PW-1/1 to PW-1/4. I have not brought the negatives of these photographs. However, I can produce the negatives of these photographs tomorrow or on any other day fixed in this regard. I identify Sh. Hari Ram Tiwari who is sitting here next to me.”

39. As is evident from PW-1's statement extracted above, the said witness who was a Head constable confirmed having visited the site of the election meeting. He had seen the workman addressing the gathering. He took the photographs which were exhibited on record and he also identified the workman sitting next to him during the enquiry proceedings. Thus the workman had been clearly identified. On 22nd May, 2008, the workman did not join the proceedings. He was given an opportunity on the said date to cross-examine two witnesses. Copies of the statements made by both witnesses were sent by registered post to the workman. The workman then appeared on 2nd June, 2008. He was given an opportunity to cross-examine the two police officials, however, he refused to cross-examine them.

40. PW-2, SI Satish Singh, PS, Moti Nagar, New Delhi gave his statement on 22nd May, 2008. He stated that while he was on patrolling duty, he found that the workman was wearing the party logo and addressing the election meeting on 3rd April, 2007. Since there was no permission to hold the public meeting, the candidate and the workman were informed about the same. When they were asked not to conduct the meeting, a DD entry was made by PW-2 which was thereafter forwarded to the NDMC for disciplinary action.

According to PW-2, since the workman was a government employee, he was not permitted to participate in any election meeting. The IO himself put various questions to PW-2, which was clearly meant to satisfy the IO of the genuinity of the witness.

41. The IO thereafter recorded the statement of PW-3 on 2nd June, 2008. The workman was present but he did not wish to cross-examine the witness. The IO himself put questions to the witness. On 17th June, 2008, the workman did not appear despite notice and the statement of PW-4 was recorded on the said date. A copy of the order and PW-4's statement was, however, sent to the workman.

42. Written submissions were finally filed by the NDMC on 27th June, 2008. The workman did not appear on the said date but he was sent a copy of the written submissions. Finally, on 15th July, 2008, the workman appeared and filed his written submissions/arguments but refused to sign the order sheet to acknowledge that he had attended the hearing.

43. Thereafter, the inquiry report dated 5th September, 2008 was submitted by the IO. The IO framed the following factual questions:

"1. Whether or not Sh. Hari Ram Tiwari, CO, took part in the election meeting held on 03-04-2007 at the Road opposite B-58, Rama Road to canvass the candidature of Ms. Raj Laxmi, a candidate from Ward No. 97, Kirti Nagar, New Delhi in the election to the MCD?"

2. Whether the act of Sh. Hari Ram Tiwari, CO in taking part in the election meeting held on 03-04-2007 at the Road opposite B-58, Rama Road to canvass the candidature of Ms. Raj Laxmi, a candidate from Ward No. 97, Kirti Nagar, New Delhi in the election to the MCD makes him

unbecoming of a municipal servant?”

44. On the first issue, the IO noted that the workman did not summon any witnesses to support his case. He was proceeded *ex-parte* on 22nd February, 2008, however, he continued to participate in the proceedings. The IO specifically notes as under:

“xxx

Inspite of service of notice Sh. Hari Ram Tiwari did not attend the inquiry proceedings even on 22-02-2008; therefore, inquiry was proceeded ex-parte with directions that from now onwards proceedings shall be held in the absence of the CO. The PO was directed to produce the evidence by which he proposed to prove the articles of charge framed against the CO and the matter was adjourned for recording statement of the witnesses of the department on 19-03-2008 at 3-30 PM. A copy of order dated 22-02-2008 was sent to Sh. Hari Ram Tiwari, the CO by registered post through CRB of NDMC vide No. 50/IO/Addl.LO/08 dated 26-02-2008. Summary of date wise developments which took place after 22-02-2008 has been given above and same is not being repeated here to avoid repetition.

The statement of PW-1, PW-2 and PW-3 was recorded in the presence of the CO and he was given sufficient opportunity to cross-examine the said witnesses but he declined to cross-examine the witnesses on the misconceived and untenable plea that he would cross-examine them only after copies of the documents mentioned by him in his letter dated 02-06-2008 are supplied to him. It was made clear to him that the proceedings are going on ex-parte and he has the liberty to join the proceedings at any stage but if he does so the ground already covered would not be repeated. It was further made clear to him that the stage for supply of documents

or furnishing list of defence witnesses was long back over and the proceedings were fixed for that day for recording of statement of witnesses of the department. He was given ample time and opportunity to obtain the document(s) through the I.O. but he did not avail of the opportunities so given to him. He was also informed that in his application dated 02-06-2008 he had not given details of the controlling officer in whose custody the required documents are nor he has mentioned the relevance of the documents demanded by him. For the above said reasons his request to supply the documents mentioned in his above said letter was not acceded to.

On 15-07-2008, the CO filed his written submissions. In the end of written submissions filed by him he has requested to the I.O. "to restore recall Enquiry proceedings and give me an opportunity to cross examine on the statement of management witness and produce evidence on merit in defence in the interest of the natural justice, failing which I reserved my right to produce evidence in rebuttal before the competent court of law." His request to allow him 'to produce evidence on merit in defence' was not only highly belated but also in combination with other request which if allowed would have the effect of initiating the enquiry de-novo. Names of the witnesses were also not given. A specific oral request in this regard was also not made, therefore, this request was not allowed.

The CO did not cross-examine any of the witnesses produced by the department; therefore, statement of all the witnesses has gone un rebutted.

The conduct and behaviour of Sh. Hari Ram Tiwari, the CO throughout the proceedings have been most uncooperative. From the beginning Sh. Hari Ram Tiwari, the CO has focused all his energy to portray the PO, IO and the Police Personnel as

unfair and biased persons. He has been leveling false and concocted allegation against the PO, the CO, the complainant and the witnesses. He has throughout taken the stand that the PO, the IO, the complainant and the witnesses all are biased and bent upon to implicate him on false charges. However, he does not say as to what they would benefit by involving him in a false case. Date wise proceedings of the case show that he was always given fair opportunity to participate in the proceedings and contest the case on merits. He instead of adopting the legal and fair course took to leveling false and concocted allegation that he was not allowed to participate in the proceedings. A copy of each and every order made during the proceedings was given to him and after the enquiry proceeded ex-parte copy of each and every order made was sent to him through registered post. After being proceeded ex-parte, he joined and participated in most of the proceedings but was clever enough not to sign on the order sheet as was the usual practice to create false case that he was not allowed to participate in the proceedings. The CO whenever participated in the enquiry was asked to put his signatures on the order sheet to show that whatever is recorded therein has been recorded in his presence. The CO participated in the proceedings dated 02-06-2008 and 15-07-2008 is evidenced from the letter dated 02-06-2008 and written submissions dated 15-07-2008 which he personally handed over to the I.O. on those dates."

45. As per the above extracted paragraphs, it is clear that the workman did not cooperate in the inquiry proceedings though he had complete knowledge of the same. The IO arrived at the conclusion that on the basis of the evidence of the SI (PW-2) and Head Constable (PW-1), it is clear that the workman was present in the election meeting on behalf of his wife. Both witnesses not

only identified the workman but also took photographs of the meeting. Accordingly, the IO held that the NDMC had established that the workman had participated in the election meeting. On issue number 2, the IO holds that the conduct of the workman is contrary to Rule 5(4) of the CCS (Conduct) Rules, 1964 which bar any government servant from canvassing or taking part in any election. His conduct was thus found in violation of Rule 3 of the CCS (Conduct) Rules, 1964.

Conclusions

46. This Court has perused the inquiry report as also the findings of the Labour Court and finds that the conclusion of the Labour Court, to the effect that the inquiry was not fair and the workman was not given an opportunity to defend himself, is completely contrary to the record. The report of the IO and the day to day proceedings were before the Labour Court. The IO has been extremely meticulous in the manner in which he has conducted the inquiry. On several dates, the workman was present in the inquiry proceedings. He also absented himself on some hearings. However, the IO ensured that no prejudice was caused to him as all the orders were duly communicated to the workman. On days when a statement of a witness was recorded and the workman had chosen to absent himself, apart from the order which gave the next date in the matter, the statements were also attached and sent by registered post to the workman. The workman was present in the beginning of the inquiry and at the end he has submitted his written submissions as well. From the petition, it is clear that the workman has himself acted as a Presenting Officer for various other workmen in NDMC and was therefore well aware of the procedures followed in an inquiry of this nature. Even before this Court, the workman and his daughter have made

submissions without engaging any counsel. The finding of the Labour Court that the IO did not follow the principles of natural justice is thus completely perverse, contrary to the record and untenable.

47. The Labour Court seems to be prejudiced by the fact that the IO himself was not present as a witness before the Court. In any organization which has thousands of employees, an inquiry of this nature which is conducted, is put to test several years later. It cannot be expected that the IO ought to be produced in each and every case as there are various events that may have occurred from the time when the inquiry is held and when the matter is challenged in Court. The IO may have either retired or been transferred or for whatever reason, may not be available. This, however, does not mean that the inquiry would get vitiated if the IO is not produced. The witnesses from the Management had clearly produced the official records of the NDMC. A witness is entitled to depose on the basis of record. Just because the witness is not the IO himself does not mean that the inquiry can be held to be vitiated. Such an approach would be completely contrary to law.

48. In this case, the inquiry took place in 2007-08. The evidence of the management's witnesses was recorded sometime in 2017-18 i.e. almost ten years later. By this time, the IO had already retired. It cannot be expected that a retired employee ought to be produced in every matter to prove the record of the organization.

49. A preliminary objection taken by the NDMC was that the workman's statement of claim before the Labour Court was not maintainable in view of Rule 23 of the CCS (CCA) Rules 1965, which specifies the orders against which an appeal lies. Reliance was placed on Resolution No. 29 passed by the NDMC on 23rd November, 1989 by which the CCS (CCA) Rules 1965 have

been adopted. Though the Labor Court, vide impugned order dated 27th April, 2019, records this contention, it fails to address the same as it restricts its analysis to the issue as to whether or not the inquiry itself was fair and proper.

50. The day to day proceedings, which have been placed on record by the NDMC, show that the inquiry has been conducted in a methodical, systematic, fair and transparent manner. The IO has taken great pains to ensure that every order and every document demanded by the workman has been supplied to him. Under such circumstances, the grievance of the workman that the inquiry was unfair, arbitrary or violative of principles of natural justice is clearly not sustainable. The said submission is accordingly rejected and the finding to this effect in the impugned order is liable to be set aside.

51. Now coming to the merits as to whether the workman had indeed been guilty of participating in the election campaign for his wife. The relevant Rule of the CCS (Conduct) Rule, 1964 reads as under:

“5. Taking part in politics and elections.

...

(4) No Government servant shall canvass or otherwise interfere with, or use his influence in connection with or take part in an election to any legislature or local authority:

Provided that –

- (i) *a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;*
- (ii) *a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due*

performance of a duty imposed on him by or under any law for the time being in force.
EXPLANATION.- The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.”

52. As per the above Rule, a government employee cannot participate in any political activity or be associated with any political party. A government servant cannot also canvass for any political party. The evidence on record which was relied upon by the IO shows that the two police officers had placed on record photographs of the workman participating in the election campaign of his wife. These photographs and the statements of the two police officers was part of the record before the Labour Court. Thus, irrespective of whether evidence was led by the Management or not, this record could not have been ignored and ought to have been perused by the Labour Court.

53. Further, the police official who had appeared for the management had identified the workman who was sitting next to him in the inquiry proceedings. In the photographs, the workman is seen standing on the stage in front of a poster of his wife who is shown as a candidate in the election. Moreover, the workman himself admitted in reply to the show-cause notice that he was there to welcome friends and relatives. Thus, his stand thereafter before the Labour Court that it was not him but one Mr. D. N. Jha who was present during the election meeting clearly appears to be false. The order of the Id. Single Judge in CrI. MC. 2871/2010 clearly observes that the stand of the workman was contrary to his earlier stand that he was present on the spot but not on the dias. This clearly shows that the workman has not been candid and truthful in various proceedings.

54. The Labour Court does not give any finding on this aspect i.e., on the merits as to whether the workman was indeed present in the election meeting. The Labour Court simply holds that since the inquiry is vitiated, the punishment of termination was illegal and accordingly all service benefits, including compensation of Rs.5 lakhs, has been granted to the workman. The Labour Court notices the order in SLP (Crl) 4625/2011 dated 12th August, 2011 but fails to consider the order of the Id. Single Judge in Crl. MC. 2871/2010 by which the FIR filed by the workman was quashed.

55. A perusal of the evidence of Sh. D.N. Jha (WW-2) who claims that he was in the photograph shows that he admitted that he was the President of the “*All India Forward Block*”, Delhi Unit. He was not aware as to who were the persons present in the said meeting. He further stated that he only made one speech in support of Smt. Raj Laxmi. There is no photograph of Sh. D.N. Jha placed on record. The statement of Sh. Jha was recorded by Sh. Chandra Gupta, P.O.L.C.- X. However, the impugned order dated 27th April, 2019 has been passed by Sh. Rakesh Kumar, PO, Labor Court-X, Dwarka Courts, Delhi and the impugned order dated 12th September, 2019 has been passed by Sh. Vinay Singhal, PO, Labour Court. Thus, the PO who recorded the evidence of Sh. Jha and the two Presiding Officers who passed the impugned orders were different. As there was no photograph on record, they had no way of knowing as to whether the person in the photographs was Sh. Jha or not.

56. On the balance, the question is as to whether the statement of Sh. Jha ought to be believed or the statement of the two police officials ought to be believed. On the basis of the evidence of the two police officials as also the daily diary notes which was sent by the SI on 6th April, 2007 to the Secretary, NDMC, this Court accepts the statements of the police officials as being

genuine. Moreover, the workman has also failed to cross-examine both the police officials before the IO.

57. Thus, insofar as the merits of this case are concerned, since the evidence before the IO was present on record, and the inquiry has been held in a fair and transparent manner, in compliance with the principles of natural justice, this Court is of the opinion that the impugned orders deserve to be set-aside. The action taken by the NDMC is completely in accordance with law and the punishment of compulsory retirement imposed vide order dated 16th December, 2008 is accordingly upheld.

58. The orders passed by the Labour Court dated 27th April, 2019 and 12th September, 2019, updated on 9th October, 2019 are accordingly set aside and the petition is allowed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 9, 2020

Rahul/C

