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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:- 15.01.2020

+ W.P.(C) 2549/2017 & C.M. No.10983/2017 (for stay)

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through: Ms.Sriparna Chatterjee, Adv.

versus

VIJAY KUMAR SHARMA Respondent
Through: Mr.Jai Sahai Endlaw with
Mr.Shivansh Soni & Ms.Deepika
Mishra, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the Management/New Delhi Municipal Corporation assails the award dated 02.03.2016 passed by the learned Labour Court-XVII, Karkardooma Courts, Delhi in ID No.1199/16. Under the impugned award, the Labour Court has, while rejecting the respondent's claim to be regularised as a Pump Driver, directed the petitioner to regularise him on the post of Khalasi (Group-D) w.e.f. 02.06.1986 and grant him all consequential benefits arising therefrom.

2. The respondent, having joined the petitioner/corporation as a Pump Driver in December, 1981, was brought on the regular muster roll of this post w.e.f. 10.02.1983. Aggrieved by his non-regularisation, despite rendering over 5 years of service at the corporation, the respondent made several representations to the petitioner seeking his regularisation. The petitioner considered his

grievance and, notwithstanding the recommendation of its officers to regularise the respondent as a Pump Driver by granting him relaxation, informed the respondent vide its letter Ex.MW1/3 that he was not eligible for regularisation. The petitioner, instead, advised the respondent to accept its offer, made vide office order dated 10.11.1986, to regularise him at the post of Khalasi. However, the respondent refused this offer and continued to claim regularisation as a Pump Driver, for which purpose he even met the petitioner's Chairman in April, 2003. Subsequently, vide letter dated 02.06.2003, the petitioner once again asked the respondent to accept regularisation on the post of Khalasi. Aggrieved by the petitioner's refusal to regularise him on the post of Pump Driver, the respondent raised an industrial dispute which was referred for adjudication to the Labour Court.

3. Before the Labour Court, the petitioner opposed the respondent's claim and reiterated that the respondent was eligible only for being regularised as a Khalasi as he did not fulfil the requisite qualifications for the post of Pump Driver. The petitioner claimed that it had made repeated efforts to convince the respondent on this aspect, which had been thwarted and, therefore, his claim was liable to be rejected. In support thereof, the petitioner filed its evidence by way of affidavit as also a copy of the letter which was purportedly dated 02.06.1986 wherein the respondent was advised to accept the offer of regularisation as a Khalasi.

4. The Labour Court rejected the respondent's claim to be regularised as a Pump Driver, vide its impugned award. However, by

relying on the petitioner's offer, the Labour Court allowed the claim of the respondent by directing his regularisation to the post of Khalasi w.e.f. 10.11.1986, in accordance with the terms of Ex.MW1/3 which had been filed by the petitioner itself. The Labour Court further directed the petitioner to grant him all consequential benefits arising out of the said regularisation. At this stage, it may be appropriate to reproduce in extenso the observations of the Labour Court in paragraphs 12 to 14 of the impugned award, which reads as under:-

“12. The management had filed written statement Ex.WW3/1 dated 27.06.2003 before the ALC Office. Following paragraph of that written statement are relevant:-

(i) It is true and not denied that he was engaged on TMR as Pump Driver in the year 1981 and on 10.02.1983, he was taken on R.M.R.

(ii) A list was prepared for group 'C' workers working on RMR in the year 2001, and his name was at S. No. 18, of the said list on demand of Director (P) on 12.12.2000.

(iii) The said list of workers on RMR group 'C' workers on RMR was sent to the authorities for their regularization on 19.07.2001.

(iv) The authorities have not considered his case of P regularization as he was not eligible and fulfilled the required educational qualification of ITI Certificate. But considered for regularization on Group 'D' post i.e. against the post of Khalasi in Elect. Deptt. as he fulfils the educational qualification.

(v) On 10.11.1999 while considering his case for regularization, he was asked to furnish an acceptance for the post of Khalasi vide No. SO(E)3139/SA-III dated 10.11.99 which is still awaited.

In April, 2003 he met with Chairman regarding his regularization and again in June, 2003 on the advice of Chairman he was asked for his acceptance for the post of Khalasi within 30 days vide No. SO(E) 1435/SA-III dated 02.06.03, failing which offer would be withdrawn. Instead of giving acceptance he moved before ALC for the said purpose.

(vi) As per the policy the services of Group 'C' RMR worker can be regularized in Group 'C' post only subject to fulfilling RRS and availability of vacancy.

Further, his services cannot be regularized on Group 'C' post as he does not possess the requirement of RR for post of Pump Driver. However, he was given an opportunity for regularization in Group 'D' post, seeking the working on RMR for 10 years, which he has not accepted till date".

13. It becomes clear from Ex. MWI/3 and Ex. MW3/1 that the management had given claimant an offer of regularization as Khalasi on 10.11.1986 and such offer was in existence as on 27.06.2003. That offer would not materialize because the claimant had not given his consent for regularization as Khalasi. Under ill advise, he was insisting for Pump Operator. The offer remained open for him for 17 long years. In Nand Kumar Vs. State of Bihar & Ors. (Supra), the State Government had not held out any promise to the workers while engaging their services either to continue them where they were or to make them permanent. In the case in hand, there is something more than promise from the site of management. In fact, the post of Khalasi was offered to the claimant and he could not be regularized due to his own mistake. So, the cited law is not applicable to the case in hand. The management cannot be allowed to retreat and foreclose the offer which it had given to the claimant on 10.11.1986 vide letter Ex.MWI/3.

14. In view of above discussion, the management is directed to regularize the claimant on the post of Khalasi (Group D) w.e.f.

02.06.1986. It is further directed to provide him all consequential benefits within a month from the date of publication of his award failing which it shall be liable to pay interest @ 9 per cent per annum from today till realization. Reference is answered accordingly. Award is passed accordingly.”

5. Impugning this award, the present writ petition has been filed by the New Delhi Municipal Corporation.

6. In support of the petition, Ms Sriparna Chatterjee learned counsel for the petitioner has raised primarily three grounds. The first and foremost plea being that the petitioner could not be directed to implement its offer to regularise the respondent as a Khalasi at this belated stage, merely because it had, at one point of time, made such an offer. She submits that in any event, it cannot be lost sight of the fact that the petitioner's offer had been made over 30 years ago which offer was declined by the respondent at the time; the Labour Court has erroneously treated the petitioner's offer as an open-ended offer, by discounting the fact that this offer was not valid any longer and could certainly not be relied upon to grant the respondent any reliefs.

7. The second contention of Ms.Chatterjee is that the reliance by the Labour Court on the letter dated 02.06.1986 at Ex.MWI/3 is wholly misplaced as the genuineness thereof was questionable. To that end she submits that the contents of the aforesaid letter make reference to an offer dated 10.11.1986, which was several months after the date of the letter itself, which shows that the letter dated 02.06.1986 was either fabricated or procured. She, therefore, contends that the impugned award which primarily relies on this letter is liable

to be set aside.

8. She finally submits that in any event, once the respondent's own case is that he was appointed on the regular muster roll on 10.02.1983, he could not be regularised before completing six years of service as a regular muster roll employee i.e. 10.02.1989. She, therefore, prays that the impugned order be set aside.

9. On the other hand, Mr. Jai Sahai Endlaw learned counsel for the respondent submits that even though the respondent was fully eligible to be regularised as a Pump Driver in the opinion of the petitioner's own officers, he has duly been granted regularisation at the post of 'Khalasi' under the impugned award. Without prejudice to his aforesaid plea, he submits that once the petitioner itself had sought to rely on the letter Ex.MW1/3, the Labour Court, while rejecting the respondent's claim for regularisation as a 'Pump Driver', was fully justified in directing the petitioner to regularise him on the lower post of 'Khalasi' on the basis of the said letter. He submits that before the Labour Court, the petitioner had filed only a duly attested typed copy of the aforesaid letter and it is only before this Court that a photocopy of the said letter Ex.MW1/3 has now been placed on record. A perusal of the said photocopy would show that the figure '1986' has been handwritten in the said letter which shows that there is every possibility that this letter was written in the year 1987, but while being filed before the Labour Court, was inadvertently dated to the year '1986' by some officer in the petitioner/organisation. He submits that, in any event, the petitioner had never taken this plea either before the Labour Court or in its pleadings before this Court and, therefore, it

cannot now be allowed to contest the correctness of the contents of the said letter.

10. Mr.Endlaw further submits that the petitioner's plea that the respondent could be regularised only after rendering six years' service as a regular muster roll workman is also misplaced. He submits that the said condition of six years of service was incorporated for the first time in the resolution dated 27.01.1987 and the past practice of the petitioner was to regularise a regular muster roll workman as and when the regular vacancy arose. He submits that even otherwise, once the petitioner chose not to file its earlier resolution, the Labour Court was fully justified in accepting the respondent's plea that he was entitled to be regularised at least from 10.11.1986 as a Khalasi.

11. I have considered the rival submissions of the learned counsel for the parties and with their assistance perused the record.

12. As noted hereinabove, the primary basis on which the impugned award has been passed is the offer made by the petitioner to the respondent vide its office order dated 10.11.1986, the contents whereof were referred to by the petitioner itself in its letter Ex.MW1/3. Though the petitioner has vehemently contended that the said letter should not be relied upon, I am unable to accept the said plea as upon perusal of the note sheets filed by the petitioner along with the writ petition, I find that the said letter is in continuation of the recommendations made by the officers of the petitioner that the respondent deserved to be regularised at the post of 'Pump Driver' by grant of relaxation in educational qualifications, as had been granted to similarly placed workmen at this post. Having perused a photocopy

of the said letter, which has been placed on record before this Court, I am inclined to accept the contention of Mr. Endlaw that the figure '1986' having been handwritten could be an inadvertent mistake on the part of some officer. Therefore, it may not be safe to discard the said letter merely on the ground that the letter dated 02.06.1986 was referring to an office order dated 10.11.1986, especially when the said letter was tendered in evidence by the petitioner itself. Even otherwise, nothing much turns on the contents of the said letter, as it is the petitioner's own case that the respondent was repeatedly advised to accept its offer to regularise him on the post of Khalasi.

13. I also do not find any merit in the petitioner's plea that once the respondent chose not to accept regularisation as a Khalasi in 1986 or even in 2003, the Labour Court could not have directed the petitioner to regularise him thereon at this stage. In my view, once it is evident that the respondent joined service in December, 1981 to the higher post of 'Pump Diver' and has continued to serve at the said post to the utmost satisfaction of his superior officers, and was admittedly eligible to be regularised at least on the lower post of 'Khalasi' in the year 1986 itself, it would be a travesty of justice to deprive him of the said relief only because he was claiming regularisation on a higher post. In fact, in the light of the admitted position that the respondent was discharging duties as a Pump Driver right from December, 1981, it cannot be said that his repeated pleas for regularisation on the said post were wholly unjustified or that on account of his making the said claim he should be denied regularisation on the lower post of 'Khalasi' for which he was eligible w.e.f. 10.11.1986. I, therefore,

find no infirmity with the directions given in the impugned Award for regularisation of the respondent on the post of Khalasi w.e.f. 10.11.1986.

14. For the aforesaid reasons, I find absolutely no reason to interfere with the well reasoned award passed by the Labour Court in exercise of my writ jurisdiction. The writ petition being meritless is dismissed.

15. It is, however, made clear that the findings in the impugned award that the respondent was not eligible for regularisation as Pump Driver will not debar him from claiming promotion to the said post on the basis of his uninterrupted service on the post of Khalasi w.e.f. 10.11.1986. In case a claim for promotion to the post of 'Pump Driver' is raised by the respondent, the Labour Court will consider the same on its own merits. If the respondent is found eligible for such promotion, the Court will, in the light of the fact that these proceedings have remained pending either before the Labour Court or this Court for the last 16 years, also consider granting him benefit from a retrospective date.

16. The petitioner is directed to release consequential benefits in terms of the impugned award to the respondent within a period of three months.

REKHA PALLI, J.

JANUARY 15, 2020/gm