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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) 7811/2008

BAL KISHAN

..... Petitioner

Through: Mr. Rajiv Agarwal, Adv. with
Ms. Meghna De, Ms. Liu Gangmei, Advs.
versus

M.C.D.

..... Respondent

Through: Ms. Namrata Mukim, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The petitioner impugns the award dated 28.05.2007 passed by the learned Labour Court in ID No. 645/2006 on the ground that it records that his services were terminated for purported retrenchment whereas this was not even an issue raised by the respondent-management before the learned Labour Court; instead the officer of the respondent/management had admitted that the petitioner's services were terminated because he was involved in a criminal case. Four workmen namely-Ashok, Jaibeer, Vikas and Rajpal were also involved in the same criminal case. They continued to be in service despite being similarly placed with the petitioner. They had joined services of the management after the petitioner. Therefore, if there was going to be any retrenchment, then as per principle of LIFO- Last In First Out, the aforementioned four persons should have been retrenched first

and not the petitioner, who was better placed i.e. he was senior to them in employment. He refers to the dicta of the Supreme Court in *Harjinder Singh vs. Punjab State Warehousing Corporation*, (2010) 3 SCC 192, wherein it has been held, *inter alia*, as under:-

“16. It is true that in the writ petition filed by it, the Corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in Para 2 of the reply filed on behalf of the Corporation to the statement of claim wherein it was admitted that the appellant was engaged as work-charge motor mate for construction work on 5-3-1986 and he worked in that capacity and also as work munshi from 3-10-1986 and as mentioned above, even after expiry of the period of three months specified in the order dated 5-2-1987, the appellant continued to work till 5-7-1988 when the first notice of retrenchment was issued by the Managing Director of the Corporation. Therefore, it was not open for the Corporation to contend that the appellant had not completed 240 days' service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of “last come first go” without any tangible reason.”

(emphasis supplied)

2. Mr. D.S. Chaddha, Sanitary Superintendent, MCD has stated in his cross examination as under:-

“I D No. 645/06

MW -I Sh. D.S. Chadda recalled for further cross examination

On S.A.

xxxx by AR for workman

I have brought the muster roll attendance register of the workman concerned w.e.f. January, 1997 to December, 1999. I have not brought the attendance register of the year 2000. It is incorrect to suggest that I have not, brought the muster roll attendance register of the year 2000 deliberately and intentionally as it would have to the case of the workman. I do not know whether the co-workman shown in Ex.MW1/1 are still working with the management. It may be possible that the coworkers shown in the muster roll attendance register w.e.f. January 1997 to December 1999 are still working with the management. It is incorrect to suggest that the work against which the workman used to work is of permanent and perennial nature and is still continuing with the management. I do not know whether the management has appointed fresh hands in the category of sweepers after September, 2000. It is correct that there are 12 zones of MCD. It is also correct that the combines category wise seniority list of 12 zones is prepared and , maintained by the management in the Head Office. It is correct that the said seniority list is in the exclusive control and possession of the management. It is correct that I have not brought the said seniority list. I cannot say whether the management has issued any call letter to the workman to resume duties. It is correct that no charge sheet or memo was issued to the workman likewise no departmental enquiry was conducted against the workman. Vol. Because he was not a regular employee and is not governed by the CCS conduct rules as such no call back notice, domestic enquiry is required in case of absentism of a daily wagger/substitute safai karamchari. Even otherwise he was involved in a criminal case. It is correct that the services of the workman were terminated because of the above mentioned criminal case. I do not know whether the workman has been honourably acquitted in the above mentioned criminal case. Vol. He has not informed the department. It is incorrect to suggest that the workman has not

informed the management. It is correct that the management does not have any document or material to show that the workman is gainfully employed somewhere else after 7.09.2000. it is incorrect to suggest that the workman concerned was ordered by the senior superintendent MCD not to perform his duties w.e.f. 7.09.2000. I do not know whether other workman namely S/Sh. Ashok, Jaibeer, Vikas and Rajpal were also involved and arrested and a criminal case was also registered against the above named persons. I do not know whether the said criminal case is still pending against the above said persons in the criminal court. It is correct that the above said persons are still working with the management. I do not know whether the above said persons were regularized by the management. I do not know whether Ex.WW1/3 which is the demand notice was received by the management. However, it bears the correct address of the management. I was posted at the present place in the year 2005. It is correct that I have no personal knowledge about this case. I have got prepared the affidavit on the basis on records. It is incorrect to suggest that the contents of my affidavit are false and I am deposing falsely.”

3. The management has clearly accepted that the four other workmen were identically placed with the petitioner apropos the criminal cases, they were permitted to continue their services with the management. But an exception was made for the petitioner. He was inexplicably denied the same treatment and benefit. This is arbitrary and unfair treatment to the respondent. It is untenable in law and, therefore, would have to be set aside.

4. The petitioner was working as a Safaikaramchari. There is a policy of regularization by the MCD apropos persons who came on its muster roll. The petitioner was on muster roll with effect from 05.06.1995. Therefore, in terms of the scheme of regularization, he shall be regularized. Let requisite steps in this regard be taken within a period of six weeks from the date of

receipt of copy of this order. The petitioner shall be paid 30% of the back wages. The petitioner shall be given continuity of service for all purposes. Appropriate communication in this regard shall be issued by the respondent within six weeks from the receipt of a copy of this order.

5. The learned counsel for the respondent/management submits that the workman was gainfully employed elsewhere. However, apart from this bald statement, there is no proof.

6. The petition is disposed-off in the above terms.

7. A copy of this order be given *dasti* under the signature of the Court Master to the learned counsel for the parties.

FEBRUARY 18, 2020

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NAJMI WAZIRI, J