

\$~12 (2021)

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

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Date of decision: 22.10.2021

+ **LPA 381/2021**

VED RAM

.....Appellant

Through: Ms. Meghna De, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Physical Court Hearing]

CM APPL. 36731-32/2021

1. Allowed, subject to just exceptions.

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CM APPL. 36730/2021*[Application filed on behalf of the appellant for taking on record additional document marked as Annexure P-10]*

CM APPL. 36733/2021*[Application filed on behalf of the appellant for condonation of delay in filing the present appeal]*

2. This appeal is directed against the judgement dated 29.03.2019, passed by the learned single judge in W.P.(C.) 3140/2019.

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3. The impugned judgement, according to Ms. Meghna De, who appears on behalf of the appellant, came to be passed in the following backdrop.

3.1. The appellant was engaged as a *Mali* on muster roll in the horticulture department of the respondent, on 01.01.1987. It is claimed by the appellant that, his services were regularised on 01.04.1997.

3.2. Unfortunately, for the appellant, after nearly 12 years, a memorandum dated 23.04.1999 was served on him, alleging that he had submitted false information regarding the pendency of a criminal case against him in the “**antecedent verification form**”. The appellant was, thus, called upon to respond as to, why his services ought not to be terminated.

3.3. Admittedly, the appellant filed a response, on 10.05.1999, to the aforementioned memorandum. Broadly, the explanation given was that the appellant was falsely implicated.

3.4. To be noted, what is not in dispute is that, a First Information Report (FIR) no. 62/96, dated 01.02.1996, under Section 147/148/149/308/323/325 of the Indian Penal Code, 1860 (in short “IPC”) was lodged *qua* the appellant, in Police Station, Vasant Kunj, New Delhi.

3.5. It is claimed by the appellant that once again, he was served with a communication dated 19.07.1999, stating therein that the reply to the memorandum dated 23.04.1999 had not been submitted. The appellant takes the position that, once again, he submitted a reply to the aforementioned memorandum dated 23.04.1999.

3.6. Be that as it may, ultimately, on 26.03.2001, the appellant was dismissed from service.

3.7. Being aggrieved, the appellant preferred an appeal with the concerned

authority, apparently, on 02.05.2001. According to the appellant, no cognizance was taken of the appeal, preferred by the appellant.

4. Given this position, the appellant raised an industrial dispute, which was referred by the Government of NCT of Delhi to Labour Court–VIII, Karkadooma Courts, on 01.04.2002.

4.1. The concerned labour court, referred hereinabove, *vide* award dated 12.10.2006, sustained the order passed *qua* the appellant's termination from service.

4.2. Concededly, the award dated 12.10.2006 was challenged before this Court. Although, the appellant has not appended a copy of the order passed by this Court in that action, it is accepted that this Court, *vide* judgement dated 24.08.2007 [passed in W.P.(C.) No.6222/2007], sustained the award dated 12.10.2006.

4.3. The appellant has also taken the position that, in the meanwhile, upon the trial of the criminal case being concluded, the Learned Additional Sessions Judge (ASJ), *vide* judgement dated 30.05.2008, held the appellant guilty of the charges levelled against him.

4.3(a) However, *vide* order dated 31.05.2008 passed by the Ld. ASJ, he was released on probation. Furthermore, it is averred by the appellant that, the provision under Section 12 of the Probation of Offenders Act, 1958 was triggered, which, *inter alia*, meant that, the appellant would not suffer any disqualification because of conviction. [See pages 162 and 166 of the case file.]

4.4. The appellant preferred an appeal, along with other persons, against the judgement dated 30.05.2008. The said appeal was registered as Criminal

Appeal no. 667/2008. It is averred that, the appellant was acquitted on 14.11.2014, in the appeal preferred before this Court.

4.5. In the interregnum, the appellant avers that, he had approached the respondent for reinstatement in service. According to the appellant, since there was no movement in the matter, he, once again, raised an industrial dispute, which was referred to the Central Government Industrial Tribunal-cum-Labour Court-I, New Delhi (in short “the Tribunal”).

4.6. The Presiding Officer of the Tribunal framed the following issues:

- “1. Whether award dated 12.10.2006, passed by the Labour Court constituted by Government of NCT of Delhi, operates as res judicata?
2. Whether termination of services of the claimant, in view of provisions of Temporary Civil Service Rules 1965, does amount to retrenchment under the provisions of Industrial Disputes Act, 1947.
3. As in terms of reference?”

4.7. The appellant claims that, none of the parties led any evidence in the matter.

4.8. The Tribunal, in the second round, vide award dated 29.05.2013, rendered a decision in the favour of the respondent. In reaching this conclusion, the rationale adopted by the Tribunal is, broadly, articulated in paragraph nos. 33 to 36 of the said award.

4.9. Briefly, the Tribunal came to the conclusion that, since the earlier award dated 12.10.2006 subsisted, the parties were bound by the same. The Tribunal went on to state that, it could not invoke its jurisdiction to entertain the subsequent reference made by the Government, in that behalf.

5. It is against this decision i.e., award dated 29.05.2013, that the appellant approached the learned single judge in 2019 by way of a writ

petition, filed under Article 226 and 227 of the Constitution.

5.1. A perusal of the impugned order would show that, the learned single judge has principally dismissed the writ petition, on account of delay of almost six years in assailing the award dated 29.05.2013.

5.2. The learned single judge has also made an observation, to the effect, that, even on merits, he did not find any infirmity with the award.

5.3. Ms. De contends that the learned single judge, without examining the matter on merits, had dismissed the writ petition.

6. We have put to Ms. De that, if the learned single judge were to entertain the writ petition [from which the present appeal arises], would it not result in commencing parallel proceedings with regard to the events, which had attained finality in 2007 i.e., when the award dated 12.10.2006 was sustained by this Court, as indicated above.

6.1. Ms. De could not give us a satisfactory answer to the query raised.

6.2. Therefore, apart from the delay, a collateral challenge to the proceedings, which have attained finality, is, in our view, an impediment which constrains us from interfering with the decision of the learned single judge.

6.3. Although, Ms. De has indicated that the delay in approaching the Court was on account of lack of wherewithal; in our view, the tougher obstacle is triggering of proceedings by way of a second reference *qua* an award, which, as indicated above, had attained finality.

6.4. Therefore, we are not inclined to interfere with the impugned judgement.

7. The appeal is, accordingly, dismissed. Consequently, pending

applications shall also stand closed.

8. The case papers shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 22, 2021/pa

[Click here to check corrigendum, if any](#)

