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

+ LPA 112/2021

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mrs. Avnish Ahlawat, Adv.

Versus

VANDANA & ORS. Respondents

Through: Mr. Rajiv Agarwal, Ms. Meghna De,
Ms. L. Gangmei and Mr. N. Bhushan,
Advs.

AND

+ LPA 111/2021

EAST DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Namrata Mukim and Ms. Garima
Jindal, Advs.

Versus

JOLLY JOSEPH & ORS. Respondents

Through: Counsel for the respondents
(appearance not given).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% 16.03.2021

**CMs No.10463/2021 & 10464/2021 in LPA No.112/2021 & CM
No.10376/2021 in LPA No.111/2021 (all for exemption)**

1. Allowed, subject to all just exceptions and as per extant rules.

2. The applications are disposed of.

**LPA No.112/2021 & CM No.10462/2021 (for stay) & LPA No.111/2021
& CMs No.10375/2021 (for stay), 10377/2021 (for taking on record
additional documents)**

3. LPA No.112/2021 has been listed on urgent mentioning and has been received post Court commencement hours.

4. In the morning, when LPA No.111/2021 was called, on the request of

the counsels, we passed over the same to take up both the appeals together.

5. We have heard the counsels for the appellant North Delhi Municipal Corporation (NrDMC) and East Delhi Municipal Corporation (EDMC), as well as the counsels for the respondents in both the appeals.

6. The position which emerges is as under:

(i) The erstwhile Municipal Corporation of Delhi i.e. prior to its trifurcation, hired the respondents on contractual basis. The respondents raised an industrial dispute for their regularisation and of which reference was made. The said industrial dispute resulted in an award dated 5th May, 2017, which is under challenge in W.P.(C) No.6128/2017 and W.P.(C) No.3276/2018 preferred by NrDMC and EDMC respectively, since in the interregnum, the trifurcation had taken place and the respondents had been allocated to either of the three entities so created;

(ii) Vide the award impugned in the writ petitions aforesaid, the respondents have been found entitled to be regularised and direction for their regularisation has been made;

(iii) It however appears that the appellants NrDMC and EDMC had in the interregnum terminated the services of the respondents;

(iv) When the writ petitions came up first before the Single Judge, the operation of the award was *inter alia* stayed, by restraining coercive action against the appellants, on the contention that the services of the respondents had been terminated and the termination had not been challenged separately;

(v) The respondents filed applications for restoration of *status-quo ante* and/or for vacation of the stay but it is informed that no orders

were made and the matters remained pending; and,

(vi) Vide the orders dated 29th January, 2021 impugned in these two appeals, the applications of the respondents under Section 17B of the Industrial Disputes Act, 1947 have been allowed by directing the appellants to make payment under Section 17B with effect from the date of the order.

7. The contention of the counsel for the appellant EDMC is that the respondents have already recovered excess amount from the appellant EDMC, by having a recovery certificate issued and executed prior to the date when the interim stay of the award was granted in the writ petition and are thus now not entitled to recover any further amount.

8. However, on further hearing, it transpires that what has been recovered by the respondents, is for an earlier period and is not towards the Section 17B wages as have now been directed to be paid with effect from the date of the impugned order. Thus, the said ground does not come to the rescue of the appellant EDMC.

9. Else, the argument of the counsels for the appellants EDMC and NrDMC is the same, that since the services of the respondents stood terminated and they were no longer in employment on the date of the award, there is no award of reinstatement and the question of Section 17B wages does not arise.

10. We are unable to agree.

11. Once the industrial dispute qua regularisation was pending consideration and has resulted in an award of regularisation, the termination in the interim is immaterial. There can be no regularisation without the respondents continuing to be in service.

12. As far as the argument, of no order having been made on the earlier applications of respondents for restoration of *status-quo-ante* and without the respondents being ordered to be reinstated no Section 17B wages being payable, is concerned, though the Single Judge in the order impugned in the appeal preferred by NrDMC has given his reasons with respect thereto, we may only add that the award of regularisation has to be given effect to and if is not given effect to, owing to pendency of a writ petition thereagainst, wages under Section 17B become payable. Merely because the employer, during the pendency of industrial dispute has terminated the employee seeking regularisation, cannot deprive the employee of the benefits of the award ultimately made. Rather, Section 33 of the Act prohibits the employer from doing so. However we refrain from saying more since no counsel has raised the issue.

13. The counsel for the appellant EDMC states that the appellant EDMC has not terminated the services but withheld services of the respondents.

14. The counsel for the appellant NrDMC also states that the respondents had not been terminated but disengaged prior to the award.

15. The counsel for the respondents in the appeal preferred by the appellant EDMC informs that there was no stay of the operation of the award.

16. The counsel for the respondents in the appeal of the appellant NrDMC also states that there was no stay of the operation of the award.

17. However, we are not required to go into these technicalities as the matter is still at large before the Single Judge. We however clarify that our observation hereinabove are, for the purposes for Section 17B applications only and shall have no bearing on the final arguments in the writ petitions.

18. The appeals are disposed of.

19. We may however mention that recently, in *Oil and Natural Gas Corporation Vs. Krishan Gopal* MANU/SC/0141/2020 it has been held that the powers of a Labour Court or an Industrial Court also do not extend to order regularisation in the context of public employment and which order would offend the provisions of Article 14 of Constitution of India.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 16, 2021

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