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

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Decision delivered on: 08.09.2021

+ **LPA 312/2021 & CM Nos.30485-86/2021**

THE MANAGEMENT OF M S DELHI JAL BOARDAppellant
Through : Ms. Sangeeta Bharti with Mr. Amit
Sharma, Advs.

versus

ITS WORKMAN SH TEJPAL SINGHRespondent
Through : Ms. Meghna De, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM No.30486/2021

1. Allowed, subject to just exceptions.

LPA No.312/2021 & CM No.30485/2021 [*Application filed on behalf of the appellant seeking interim relief*]

Preface: -

2. This is an appeal directed against the judgement of the learned Single Judge, dated 17.02.2020.

2.1. The appellant before us, i.e., the Delhi Jal Board, had preferred a writ petition i.e., W.P.(C) 225/2007, impugning the award dated 16.01.2006, passed by the Presiding Officer, Industrial Tribunal – I, Karkardooma Courts, Delhi [in short ‘the tribunal’].

2.2. In effect, the only issue, which arose for consideration before the learned Single Judge, was, as to, the date from which the

respondent/workman should be regularized in the post of Fitter 1st Class.

Prefatory facts: -

3. The record reveals that respondent/workman had joined Delhi Water Supply and Sewage Disposal Undertaking [now known as Delhi Jal Board], as Fitter 1st class, as far back as on 20.11.1984, as a muster roll worker, although, the averment made in the appeal, is that he joined as a *beldar*.

3.1. The record also shows that, the respondent/workman's services were terminated, on 01.01.1992.

3.2. Consequent thereto, the respondent/workman laid challenge to the order of the termination, whereupon an award dated 26.02.2002 was passed, in ID No.194/1995, in his favour, reinstating him in service, with 70% backwages, with effect from 01.06.1992.

3.3. The Delhi Jal Board, being aggrieved, carried the matter to this Court by way of a writ petition. This writ petition was numbered as, W.P.(C) 4452/2003. The said writ petition was disposed of on 22.09.2004, by a brief order. The said order reads as follows:

"The Petitioner is aggrieved by an Award dated 26th February, 2002 directing reinstatement of the Respondent workman with 70% of the back wages with effect from 1st June, 1992.

On 11th September, 2003 notice was issued limited to the question of payment of back wages since it was found that there was no error in ordering reinstatement of the Respondent workman.

The Respondent workman has filed a counter affidavit in which it has been stated that a sum of about Rs.2,15,000/- has been recovered as back wages from 1st June, 1992 to 31st January, 2003. Back wages for the period from 1st February, 2003 to 30th June, 2003 amounting to Rs.16,040 based on 100% wages has still to be paid.

Since the prima facie view of this Court on 11th September, 2003 was that the Respondent workman should be paid 35% of the back

wages rather than 70%, learned counsel for the Petitioner says that she has no objection if 30% [sic 35%] of Rs.16,040 is paid to the Respondent workman so that the entire controversy is now sorted out. Learned counsel for the Respondent workman has no objection to this arrangement.

Under the circumstances, while upholding the Award dated 26th February, 2002, it is directed that the Respondent workman will be entitled to receipt of 35% of Rs.16,040/- towards back wages for the period from 1st February, 2003 to 30th June, 2003. No further orders are required to be passed in this writ petition.

The writ petition and CM 7623/2003 stand disposed of.”

3.4. It is important to note that, in the interregnum, the Delhi Jal Board had, it appears, framed, in and about 1992, a regularization policy.

3.5. Be that as it may, the respondent/workman, upon being reinstated in service, raised a demand for regularization in the post of Fitter 1st Class, albeit, from the initial date when he joined the Delhi Jal Board i.e., 20.11.1984, in the scale applicable to the said post. The Delhi Jal Board did not oblige.

3.6. Left with no option, the respondent/workman, once again, raised an industrial dispute which led to the registration of ID No.53/2004.

3.7. It appears that, while the litigation was on, the respondent/workman tendered an affidavit dated 06.10.2005 to the Delhi Jal Board, whereby, he gave his consent for being regularised in the post of Fitter 2nd Class as per the regularization policy of the Delhi Jal Board, although at that point in time, he was working as a Fitter 1st class. In a nutshell, the respondent/workman averred that he had arrived at a settlement with the Delhi Jal Board qua ID No.53/2004.

3.8. The aforesaid affidavit, dated 06.10.2005, is the edifice on which Delhi Jal Board's defence rests; both before the learned Single Judge, as well as this Court. For the sake of convenience, the contents of the said

affidavit are extracted hereafter.

“AFFIDAVIT

I Tejpal Singh S/o. Sh. Deep Chand, age about 43 years R/o. Vill. & P.O. Garhi Kalanjari, Distt., Baghpat (U.P.), working in the office of EE (E&M) WTP, Nangloi, Delhi Jal Board, solemnly affirm & declare as under:

1. That I am working on muster roll casual labour in DJB as fitter- Ist class. I have given my consent for regularization to the post of fitter- IInd class in the pay scale (Rs. 950-Rs. 1400 pre-revised) as per policy of regularization of DJB.

2. That I have fully understood the policy of the deptt. And submitted my consent thereafter only without any pressure and as per my free will and in my full sense.

3. That I have been given offer of appointment to the post of fitter-IInd class which I have accepted and I am not interested to persue ID. No. 53/04 pending in the court of Sh. I.S. Mehta P.O., I.T-I, Karkardooma, Shahdara, Delhi.

*s/d/-
DEPONENT”*

Arguments advanced on behalf of Delhi Jal Board: -

4. Ms. Sangeeta Bharti, who appears on behalf of the Delhi Jal Board, has, broadly, made the following submissions:

(i) The learned Single Judge failed to consider the 1992 regularization policy of the Delhi Jal Board, which mandated that the regularization can only take place in the lowest rung. The submission was that, the lowest post available was that of Fitter 2nd Class, and therefore, decision of the tribunal ought to have been interfered with.

(ii) In any event, the respondent/workman stood promoted to the post of Fitter 1st Class, with effect from 13.01.2012.

(iii) The respondent/workman had not challenged the 1992 regularization policy of the Delhi Jal Board.

Analysis and Reasons: -

5. We have heard the learned counsel for the parties and perused the record.

5.1. At the outset, we may note that it was contended by Ms. Meghna De, who appears on behalf of the respondent/workman, that, the regularization policy, was not placed before the tribunal. Given this position, we had called for the learned Single Judge's file, which disclosed that the Lower Court Record [in short "LCR"] had been summoned. The LCR disclosed that, *inter alia*, the following documents were on record.

- a) The statement of claim filed by the respondent/workman.
- b) The written statement filed by the Delhi Jal Board.
- c) The Circular dated 06.02.1992 concerning regularisation of muster roll employees.
- d) The recruitment rules approved by the Commissioner, MCD while exercising powers of the Corporation vide Decision No. 2792 dated 11.10.1982.
- e) The affidavit of evidence of the witnesses cited by the respondent/workman and the Delhi Jal Board.
- f) The transcript of the cross-examination of the witnesses.
- g) Exhibit MW1/1 i.e., letter dated 02.09.2005 of the respondent/workman, filed by Delhi Jal Board's witness.
- h) Exhibit MW1/2 [i.e., the application form dated 31.08.2005 submitted by the respondent/workman to Delhi Jal Board for regularising his service] filed by Delhi Jal Board's witness.

5.2. We, thus, perused the aforementioned pleadings/documents. Having perused the pleadings, we found that the written statement gives no clue, that the 1992 regularisation policy was filed with the tribunal. As a matter of fact, the written statement neither refers to the Circular dated 06.02.1992, which adverts to the regularisation policy, nor did it refer to the recruitment rules framed by the Commissioner, MCD on 11.10.1982.

5.3. In fact, the recruitment rules dated 11.10.1982 are not even adverted to in the affidavit of evidence filed by the Delhi Jal Board's witness, i.e., Mr. Arvind Kumar Kaushik, Administrative Officer (B).

5.4. Along with the affidavit of evidence, Mr. Arvind Kumar Kaushik, Administrative Officer (B), tendered two documents i.e., Exhibit MW1/1 and Exhibit MW1/2. A close perusal of Exhibit MW1/2 would show that the respondent/workman claimed that he had passed Class X and that he had obtained training in ITI. The respondent/workman was, however, not cross examined on the aspects concerning his qualification.

5.5. Importantly, the tribunal, has made certain observations, with regard to the position taken by the Delhi Jal Board, both, in the written statement as well as during the trial. These observations/findings are captured in paragraphs 19 and 20 of the award dated 16.01.2006, from which, the present proceedings have emanated. The said paragraphs are extracted hereafter.

“19. The management in its written statement and during cross examination admitted that the workman joined with the management since 20.11.84 as Fitter (1st Class). The management also does not dispute the termination of the workman in 1992 and thereafter his reinstatement by the order of the labour court. Copy of that award is Ex.WW1/4.

20. The facts on record indicate that the workman is working continuously with the management as Fitter (1st Class) for the last 22 years. The contention of the Learned AR for the management that the workman does not fulfill the eligibility criteria is not convincing particularly when the workman is in the continuous service of the management for the last 22 years as Fitter (1st Class). After working for 9-10 years or 22 years, the workman cannot be given the status of Fitter (IInd Class). In the presence of experience gained during the said period, it cannot be said that the workman does not fulfill the eligibility criteria. Moreover, the management has not come with the plea that the eligibility criteria is not fulfilled by the workman whether it is education and/or experience and/or technical education. Mere plea of the management is of no help to

them, as such, the workman is entitled to be regularised as Fitter (1st Class) w.e.f. 1.4.92.”

[Emphasis is ours]

5.6. A perusal of paragraph 19 of the impugned award would show that, the tribunal, has returned a finding of fact that not only did the Delhi Jal Board in its written statement, but also its witness, during cross-examination, had admitted, that the respondent/workman had been engaged with it, since the aforementioned date i.e., 20.11.1984, as Fitter 1st Class.

6. Therefore, the position which emerges, is that, the Circular dated 06.02.1992 which alluded to the 1992 regularisation policy was not tendered as evidence. Although, the Delhi Jal Board did make assertions that the respondent/workman's plea for regularisation in the post of Fitter 1st class did not fall within the ambit of the 1992 regularisation policy and that he did not have the requisite qualifications to be appointed to the said post - there was no reference to any clause/term of the policy, which would support these assertions.

6.1. Furthermore, as noticed above, Exhibit MW-1/2, in fact, shows that the respondent/workman had the requisite qualifications. As noticed above, no suggestion was made to the respondent/workman, during cross examination, that he did not have the requisite qualifications and/or did not fulfil the eligibility criteria.

6.2. Pertinently, the affidavit dated 06.10.2005, was not filed before the tribunal. The Delhi Jal Board, however, did file a letter dated 02.09.2005 [Exhibit MW-1/1], issued by the respondent/workman, to the Administrative Officer, Delhi Jal Board which is suggestive of the fact that at that point in time, the respondent/workman did agree to Delhi Jal Board's proposal of appointing him on a regular basis, albeit, in the post of Fitter 2nd Class.

6.3. We were informed that the respondent/workman was promoted to the

post of Fitter 1st Class, via Office Order No. 09, dated 13.01.2012.

6.4. As noticed above, the recruitment rules, which were found in the LCR, although not tendered as evidence, required the respondent/workman to have the following essential qualifications for gaining employment through direct recruitment route, in the post of Fitter 1st class.

- a) Matric pass.
- b) Certificate in Mechanical/Fitter of equivalent trade from ITI or any other recognised institution
- c) 3 years' experience in the trade in some Govt./Semi Govt./Recognised Institution.

6.5. The recruitment rules also provided that the preferred mode of recruitment was via promotion, failing which, by direct recruitment. Insofar as promotees were concerned, they were required to have a minimum of 5 years regular service in the feeder grade. The recruitment rules also adverted to the fact that the post of Fitter 1st Class was a selection post.

6.6. In this case, the record shows, although, the Delhi Jal Board has taken the stand that the respondent/workman was inducted in its service, in the post of Fitter 1st Class on account of exigency, there is no assertion made as to how long the exigency subsisted. The respondent/workman, in his statement of claim, did aver, that the Delhi Jal Board resorted to unfair labour practice in neither regularising him nor paying him salary/wages as per pay scale, which was made applicable to his compatriots, who were holding the same post, and performing the same work. The respondent/workman, in this behalf, has adverted to Entry 10 of Schedule V read with Section 25T and 25U of the Industrial Disputes Act, 1947 [in short "I.D. Act"].

7. Thus, the position, which materializes is, that even if one were to take

into account the recruitment rules dated 11.10.1982, the respondent/workman [as per the state of the record, available to us] possessed, as it appears, the requisite qualifications to hold the post of Fitter 1st Class. The argument that no selection was conducted, seems nebulous as, apparently, since the respondent/workman had the necessary qualifications, he was inducted into service, albeit, as a muster roll worker. It is apparent that this assertion is made without material particulars, as the exercise was carried out way back in 1984 and that too by Delhi Jal Board's predecessor in interest i.e., Delhi Water Supply and Sewage Disposal Undertaking.

7.1. The Delhi Jal Board, however, regularised the respondent/workman, in the first instance [after the order of termination was set aside on 26.02.2002], in the post of Fitter 2nd Class, via an order dated 07.11.2005 and then, went on to promote him only on 13.01.2012.

7.2. The respondent/workman, having worked continuously, from 20.11.1984 till 01.01.1992, and thereafter, between 07.11.2005 and 13.01.2012, in the post of Fitter 1st Class, sought his regularisation in the post of Fitter 1st Class from the initial date of appointment i.e., 20.11.1984.

7.3. The tribunal, on the other hand, has directed his regularisation in the post of Fitter 1st Class from 01.04.1992. The tribunal, while passing this operative direction, has taken into account the respondent/workman's long years of service, in the post of Fitter 1st Class. The learned Single Judge has also sustained the award keeping this aspect in mind.

8. We are of the view that the Delhi Jal Board has done itself great disservice in not prosecuting the matter with due diligence. The relevant documents have either not been filed or tendered in evidence. As noticed above, certain documents are placed on record, which find no mention in the pleadings on record.

8.1. The assertions made both, in the writ petition, and the appeal, shed no light as to the scope and ambit of the policy, and the provisions of the recruitment rules. We had to rummage through the LCR to examine whether conclusion reached by the tribunal and the learned Single Judge should be disturbed, at this stage. The respondent/workman, has all along, worked in the post of Fitter 1st Class, except for the forced exclusion from work between 1992 and 2005.

8.2. In our view, the respondent/workman should have been, in the very least, regularised in the post of Fitter 1st Class, from 1992, as has been held by the tribunal since he appears to have been in possession of requisite qualification when he was first inducted into service. The affidavit dated 06.10.2005 or even exhibit MW-1/1 on which Delhi Jal Board may want to place reliance on [though not pressed into service before us], in our opinion, cannot estop the respondent/workman, in law, from claiming, what he is otherwise entitled to. As noted above, the said affidavit was not filed with the tribunal. This affidavit was filed, for the first time, before the learned Single Judge.

8.3. Insofar as the submission of Ms. Bharti is concerned, which is, that the regularisation can only take place in the lowest rung - this argument could have been appreciated, only if the entire policy had been placed on record, which would have enabled the tribunal and the learned Single Judge as also this Court to appreciate the nuances of the policy. As noticed, hereinabove, what was filed in the tribunal was only a Circular dated 06.02.1992. Notably, the Circular was not tendered in evidence. Therefore, this submission of Ms. Bharti cannot cut much ice, having regard to the fact, as alluded to hereinabove, that the respondent/workman had been working in the post of Fitter 1st Class since 20.11.1984.

8.4. Before we conclude, we may note that Ms. De had argued that the delay in regularising the respondent/workman on the post of Fitter 1st Class was an unfair labour practice within the meaning of Section 2(ra) read with Entry 10 of the Fifth Schedule of the Industrial Disputes Act, 1947. In our opinion, this aspect of the matter need not be examined further, in view of the conclusion that we have arrived at, hereinabove.

Conclusion: -

9. Thus, for the foregoing reasons, we are not inclined to interfere with the judgement passed by the learned Single Judge dated 17.02.2020 by which the award of the tribunal was sustained.

10. The appeal is, accordingly, dismissed. Consequently, pending application shall also stand closed. The case papers shall be consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 8, 2021

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Click here to check corrigendum, if any