



\$~14

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decided on: 27.05.2022

+

LPA 361/2022 & CM APPLs. 25592-25594/2022

HOSPITAL EMPLOYEES UNION

..... Appellant

Through: Mr Naveen R. Nath, Sr.
Advocate with Ms Lalit Mohini
Bhat, Mr Abhimanyu Verma
and Mr Anirudh R. Bhat,
Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

Through: Ms. Namrita Mukim, Standing
Counsel for North MCD with
Ms Garima Jindal, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. Issue notice. The learned counsel named above accepts notice on behalf of the respondents.
2. At joint request, the petition is taken up for disposal.
3. The appellant is aggrieved by the observations made in the judgment dated 25.03.2021 and the order dated 22.02.2022,



in W.P (C) 8612/2019 which has held *inter alia* as under:-

“...7. Before the Labour Court, on behalf of the Workman, the Secretary of the Union, Mr. Surender Bhardwaj also gave evidence. In his affidavit, he also states that the Workman is entitled to compassionate appointment. The statement today made by the Workman clearly shows that he has informed the Union and its office bearers about his employment. The affidavit of Mr Surender Bhardwaj, reads as under:

“3. The deponent submits that as the workman concerned, approached our union for securing his appointment on compassionate ground on any suitable post on regular basis in proper pay scale and allowances with retrospective from the date of death of his father.” Consequently, a resolution was also passed in the meeting of union held on 08.10.2008. A copy of said resolution is already on record marked as Ext. WWR/4.

4. The deponent further submits that Sh. Rajiv Agarwal is the General Secretary of Hospital Employees Union. I am also part and parcel of the Hospital Employees' Union since last many years and as such I have seen Sh. Rajiv Agarwal writing and signing and as such, I can identify the signature.

5. The deponent submits that, as such the case of the workman concerned was duly espoused by our union and as such our union is pursuing for redressal of grievance of the workman concerned.”

.....

8. In the cross-examination of Mr. Surender Bhardwaj also, the Labour Court has not been informed that the Workman was already employed. From the above affidavit it appears that the counsel appearing for the Workman herein, had signed the documents on behalf of the Union, in his capacity as General Secretary of the Union.



.....
12. All these facts clearly appear to be well within the knowledge of the Workman, the office bearers of the Union as also the various representatives for the Workman, including the Id. counsel for Workman, however, there has been a clear concealment of material facts leading to the Labour Court passing the impugned award dated 1st February, 2019 by which compassionate appointment has been directed to be given to the Workman.

.....
14. Mr. Surender Bhardwaj, Secretary of the Union who deposed on behalf of the Workman is directed to be physically present before the Court on the next date. In case, Mr. Bhardwaj, is no longer the Secretary of the Union, the present General Secretary of the Union shall, in addition, be also present before the Court. The General Secretary of the Union shall be served at: Hospital Employees Union, Agarwal Bhawan, GT Road, Tis Hazari, Delhi-54. Mr. Surender Bhadwaj, shall be served on his mobile Number-9873376166.”.....

The said judgment dated 25.03.2021 has held inter alia as under:-

“.....18. From the facts that emerge, it is clear that all is not well in the manner in which the matter has proceeded all through since the time of filing of application for compassionate appointment. The Workman has resorted to falsity since inception, i.e., the filing of the application giving of incorrect information, non-disclosure of all particulars of his employment and an impression has been sought to be portrayed that the Workman was in penury and his family was destitute, while the actual fact was that the Workman was working in a government institution during this entire period. The explanation given by the Workman today is that he was told by some employees of the Corporation and by the Union that since he was under contractual



employment the same would not be construed as regular employment and need not be disclosed at the time of filing the application for compassion appointment. The exact truth of the statement obviously cannot be ascertained by this Court at this stage of these proceedings as the same is in the realm of past events, of which the Workman claims to state his own version. On the other hand, the Secretary of the Union who had signed the espousal before the CGIT, is in the Court and takes a position that the Workman had neither informed him nor the Union of the fact that he was employed.

19. The purpose of compassionate appointment is to help and support the family of a deceased employee who may be in dire need. This Court cannot condone the fact that there has been misrepresentation and concealment on behalf of the Workman and Union in this matter. Moreover, the fact that the ld. counsel appearing for the Union is also General Secretary of the Union also blurs the distinction between the client and the advocate which ought not to ideally happen. The Workman has clearly given misleading affidavits before this Court which have been espoused by the Union and its ld. counsel before the Court. The entire turn of events is clearly not palatable. While in general, workmen's applications for compassionate appointment deserve sympathetic consideration, they cannot be permitted to mislead and make false statements. The Workman in this case ought to have candidly disclosed in his application for compassionate appointment that he has some sort of contractual appointment and then sought regular employment from the Corporation. Such a stand would have been fair and truthful. Concealing the entire factum of employment in another government institution from the Corporation and the Court is clearly deliberate and cannot be held to be innocent.

20. The Union and its representatives ought to also have



been careful in this matter while prosecuting the application on behalf of the Workman. There was also some responsibility on the part of the Id. Counsel who was the General Secretary and Secretary of the Union to also ascertain the true facts and present them in a proper manner.

.....
23. Under these circumstances, the following directions are issued:

(iii). This Court does not appreciate the stand of the Union that it was never aware that the Workman was employed. The Workman's statement to the contrary that he had informed the Union, was recorded on the last date and the same stance is reiterated by the Workman today as well in the Court. The Union is accordingly directed that in future whenever espousal of cause is taken up on behalf of any Workman, especially for compassionate appointment or any other similar application, before the Management or before the Labour Court/CGIT, the correct facts shall be ascertained regarding the employment status contractual or otherwise, of the applicant. In the present case, the Union has more than 3000 members. It is an active Union which ought to be careful so as to ensure that wrong facts are not placed before this Court or the Labour Courts and CGIT. Accordingly, costs of Rs.50,000/- shall be deposited by the Union with the Corporation within four weeks. The Union shall ensure that such conduct is not repeated in the future.".....

(emphasis supplied)

4. The learned Senior Advocate for the appellant submits that while the said order itself records that there was no proof of the workman having informed the General Secretary/Secretary of the Union, of the former being in



employment at a time of making of the application for compassionate appointment, no inference could possibly have been drawn, as noted here above in para 23 of the judgement with which the appellant has a grievance. In paragraph 18, the Court has recorded, *inter alia*, as under:-

“...18.....On the other hand, the Secretary of the Union who had signed the espousal before the CGIT, is in the Court and takes a position that the Workman had neither informed him nor the Union of the fact that he was employed.”

5. The observations as noted hereinabove would have an adverse effect on the goodwill and fair name of the General Secretary/Secretary as leader of the Employees' Union, which represents approximately 3000 employees.
6. The learned counsel for the Corporation/respondent submits that the workman had indeed informed the General Secretary/Secretary of the Union. However, to the court's query as to whether there is any proof of the same, the answer is in the negative. Therefore, in the absence of any proof or data indicating that due information had been given to the General Secretary/Secretary of the Union, the drawing of adverse inference apropos his conduct or integrity, would be unjustified.
7. In view of the above, the observations made against the Union and its General Secretary/Secretary in the impugned judgment are set aside, so is direction for deposit of costs of Rs.50,000/-.



8. With the aforesaid modification in the impugned judgment, the appeal along with pending applications, if any, is disposed off.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

MAY 27, 2022/dss/MK

