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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 01.08.2022
Pronounced on: 17.08.2022

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W.P.(C) 2515/2003

N.D.M.C.

..... Petitioner

Through: Ms. Sriparna Chatterjee,
 Mr.Soumitra Chatterjee,
 Mr.Dhananjay Bhattacharya and
 Ms. P. Yaduvanshi, Advocates.

versus

SUBHASH CHANDRA & ORS.

..... Respondents

Through: Ms. Jaya Tomar, Advocate for
 respondents Nos. 1 to 3.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The Petitioner in the present Writ Petition is impugning the Award dated 13.12.2001 passed by the Industrial Tribunal No. I in ID No.35/97 (Old ID No. 33/92) titled as '*The Management, New Delhi Municipal Committee v. Its workman as represented by New Delhi Nagar Palika Karamchhari Union*'. Vide the impugned Award, the learned Tribunal was pleased to hold that the workmen Sh. Subhash Chander, Sh. Rajbir Singh and Sh.Beer Singh (respondents Nos.1-3 in the present Writ Petition) are entitled for the wages of driver from 28.07.1987. The learned Tribunal directed for the payment of difference in salary to these workmen within 3 months from the date of publication of the Award. Regarding the fourth Workman Sh. Maharaj Singh, the learned Tribunal held that he is entitled for the



wages of driver for the days he actually performed the job of a driver. Since his application under Section 33(C)(2) of the Industrial Disputes Act, 1947 ('ID Act') was pending before the Labour Court, the Tribunal directed for computation of the amount due to him by the said Labour Court.

The facts relevant for the adjudication of the present Writ Petition are as follows:

2. It is the case of the Respondents/Workmen herein that they were working as Drivers with the Petitioner/Management at their Water Supply Division, Central Control Room, Palika Kendra, New Delhi on different dates as mentioned in their statement of claim. The Labour Inspector visited the site on 26.10.1990 and called for the record of the workmen. The Labour Inspector, vide letter dated 29.11.1990 informed the General Secretary of the Union that even though the workmen were performing the job of drivers, they were not getting paid as drivers and hence recommended for necessary action. The Respondents/Union, based on the report of the Labour Inspector, initiated the proceedings under Section 33 (C) (2) of the ID Act for the recovery of the difference of pay. Since the Petitioner Management turned down the request of the Respondents/Union for regularization of the workmen, the matter was referred to the Conciliation officer. On failure of the conciliation proceedings, the appropriate Government referred the matter to the Labour Court with the following reference:

“Whether Shri Subhash Chander, Rajbir Singh, Beer Singh and Maharaj Singh are entitled to be regularized as Driver, if so, to what relief are they entitled and what directions are necessary in this respect?”



3. That the Respondents/Workmen through their Union filed Statement of Claim explaining their cases. The Petitioner/Management filed Written Statement in which it is stated that it is not an 'Industry' under the ID Act as the management is a body of Central Government which is being assisted and financed by Home Ministry of Government of India and, as such, is not covered under the ID Act. Further, it is stated that the workmen Sh. Subhash Chander, Sh. Rajbir Singh and Sh. Beer Singh have been working as Beldars on regular muster rolls whereas workman Sh. Maharaj Singh was working as Beldar on regular establishment. Their services were being utilized as helpers to the regular Drivers. Workmen Sh. Subhash Chander, Sh. Rajbir Singh and Sh. Beer Singh were engaged as Drivers for a temporary period of 6 months vide letters dated 28.07.1987 and 27.10.1987 and necessary wages were paid to them as per rules. Later they were re-engaged as Beldars on regular muster rolls. Regarding Sh. Maharaj Singh, it is the case of the Management that he was never appointed as Driver.
4. Based on the pleadings of the parties, the following issues were framed:
- i) "Whether the claim is not maintainable?"
 - ii) "Whether the management is not an industry within the meaning of Section-2 (j) of I.D. Act"
 - iii) "Whether this Court has no jurisdiction?"
 - iv) "As in terms of reference"
5. The Workmen examined themselves as WW-1, WW-2, WW-3 and WW-4. They also examined the Mr. B.N Gupta, the Labour Inspector



as WW-5 to prove his report **Ex.WW-1/5** dated 29.11.1990. No evidence was led on behalf of the Management and hence evidence of the Management was closed on 18.09.2000.

6. The learned Tribunal vide impugned Award dated 13.12.2001 decided all the issues in favour of the Workmen and against the Management. Being aggrieved by the impugned Award, the Petitioner/Management filed the present Petition.

Submission on behalf of the Petitioner

7. Learned Counsel for the Petitioner contended that the impugned judgment is based on conjecture and surmises and is liable to be dismissed. Even though the learned Tribunal noted that the three workmen worked as Drivers only intermittently, the learned Tribunal held that these workmen are entitled for the salary of the Driver w.e.f 28.07.1987. Learned Counsel for the Petitioner further submitted that occasionally working on higher post does not entitle a person for the salary of the higher post. The Workmen were engaged as driver for a short duration, and he was paid the salary of a Driver for the said period. The learned Tribunal erred in granting him salary of the Driver w.e.f 28.07.1987. With these submissions, the learned Counsel for the Petitioner prayed for the setting aside of the award.

Submission on behalf of the Respondents/ Workmen

8. The learned counsel for the Respondents/Workmen advanced argument in support of the impugned Award and reiterated that the Workmen were working as Drivers and hence they are entitled for the salary of Drivers w.e.f 28.07.1987. The Management failed to lead any



evidence and hence failed to prove their case. Learned Counsel for the Respondents/Workmen submitted that this Court while exercising Writ Jurisdiction should not interfere with the finding of facts arrived at by the learned Tribunal. It is further the case of the Respondents/Workmen that their juniors were regularized and hence they are also entitled for regularization from the date when their juniors were regularized. With this submission, the learned counsel for the Respondents/Workmen prayed for dismissal of the Writ Petition.

Rebuttal on behalf of the Petitioner

9. In rebuttal to the submission made by learned counsel for the Respondents, Ms Sriparna Chhaterjee submitted that services of none of the officials who were junior to the Respondents have been regularized by the Petitioner.

Legal analysis based on the facts of the present case

10. Heard the arguments advanced by the learned Counsel for the parties and perused the Lower Court Record and the documents placed on record by the parties.
11. It is the case of the Respondents/Workmen that workmen Sh. Subhash Chander and Sh. Rajbir were working as Drivers from 17.04.1982, workman Sh. Beer Singh from 16.06.1981 and workman Sh. Maharaj Singh from 12.02.1980. No documents were produced by the Respondents on record to substantiate this fact. Even though, the Management failed to lead any evidence, they had taken a categorical stand in the Written Statement that the Workmen Sh. Subhash Chander, Sh. Rajbir Singh and Sh. Beer Singh were engaged as



Driver for a short period of 6 months vide Office orders dated 28.07.1987 and 27.10.1987. Regarding Workman Sh. Maharaj Singh, it is the case of the Management that he never worked as Driver. It is the consistent stand of the Management that the Respondents/ Workmen were engaged as Beldars and they were working as helpers of the regular Drivers. The Respondents/Workmen in order to prove their case, examined the Labour Inspector/WW-5 who had conducted an inspection at the workplace of the workmen and prepared a report **Ex. WW1/5** based on the documents of the Management. As per the said report **Ex. WW1/5**, workman Sh. Subhash Chander worked as Driver for 5 days, workman Sh. Beer Singh worked as Driver for 7 days, workman Sh. Maharaj Singh worked as Driver for 7 days. Regarding workman Sh. Rajbir Singh, it is mentioned that he also worked as Driver in the similar way. The office orders dated 28.07.1987 and 27.10.1987 show that the workmen Sh. Subhash Chander, Sh. Beer Singh and Sh. Rajbir Singh were engaged as Drivers for a period of 6 months in the year 1987. Hence, all these documents show that the workmen performed the job of Driver with the Petitioner/Management intermittently and not on regular basis. Hence, the Respondents/Workmen are not entitled for regularization to the post of Driver. They are only entitled for the wages of Driver for the days they actually performed the said job.

12. Perusal of the impugned Award shows that after examining the documents, the learned Tribunal also arrived at the same finding and hence rejected the claim of the Workmen for regularization. The learned Tribunal recorded a categorical finding that '*.....since the*



workmen have failed to prove that they have been regularly working as drivers or that they have applied for the post of drivers, they cannot be regularised as drivers but they are entitled to the wages of a driver that too only for the period for which they have worked as a driver which period is not continuous but intermittent even as per the report of the Labour Inspector’

13. That after recording the factual finding to the effect that the Respondents/Workmen were working with the Petitioner/Management as Drivers intermittently, the learned Tribunal in Para 21 of the impugned Award dated 13.12.2001, directed the Management that ‘...once they have been appointed as drivers vide regular orders, may be for intermittent period, they cannot be reverted to the post of Beldar and since it is admitted by Rajbir Singh that during the period of 8 months, he had received the salary of a driver, the only direction which can be given is that these three workmen are entitled to the salary of that of a driver right since 28.07.1987 and the difference is paid within three months of the publication of this award.’ The learned Tribunal proceeded further with a direction in Para 22 of the impugned Award dated 13.12.2001 that ‘... any junior to these workmen has been appointed as driver placed in similar circumstances, then these three workmen will also be entitled to be regularised as driver from the date when their juniors were regularised.’

14. This Court finds no reason or justification for giving such a direction as contained in Paras 21 and 22 of the impugned Award dated 13.12.2001. The learned Tribunal, after being satisfied with the evidence adduced by the parties, recorded a categorical finding that the



Respondents/Workmen were performing the job of Driver intermittently and hence they are not entitled for regularization to the post of Driver. The learned Tribunal further held that the Respondents/Workmen are only entitled for the wages of a Driver for those days when they actually performed the work of a driver. After arriving at such a conclusion based on the documents, the learned Tribunal without any justification, gave a direction to the Management to the effect that the 3 workmen are entitled for the salary of a Driver from 28.07.1987 and also entitled for regularization as Driver from the date when their juniors were regularized. These two findings of the learned Tribunal are contradictory to each other. The Respondents/Workmen are entitled for the wages of a Driver for those days when they actually performed the job of a driver. However, there is no justification for giving them the salary of a Driver w.e.f 28.07.1987, especially when the learned Tribunal itself was satisfied with the fact that the Respondents/Workmen were not performing the job of a Driver on regular basis. Similarly, the regularization has been rejected based on a valid reason, there is no justification for the directions as contained in Para 22 of the impugned Award.

15. This Court is of the considered opinion that the directions as given by the learned Tribunal in Paras 21 and 22 of the impugned Award dated 13.12.2001 are perverse and not sustainable in law. Hence, the directions of the learned Tribunal as contained in Paras 21 and 22 of the impugned Award dated 13.12.2001 are hereby set aside.



16. In view of the discussion herein above, the impugned Award is modified to the above extent. Writ Petition is disposed of accordingly.
No order as to cost.

GAURANG KANTH, J.

AUGUST 17, 2022

