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IN THE HIGH COURT OF DELHI AT NEW DELHI

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***Reserved on: 18.10.2022
Pronounced on: 15.11.2022***

+ **W.P.(C) 6106/2003**

MCD

..... Petitioner

Through: Ms. Aakanksha Kaul, Mr. Manek Singh and Mr. Aman Sahani, Advocates.

versus

VISHNU DUTT SHARMA

..... Respondent

Through: Mr. Bankey Bihari, Mr. Birendra Bikram and Mr. Dhananji Shekhawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition has been filed under Article 226/227 of the Constitution of India for quashing the award dated 02.07.2002 (*'the impugned award'*) in I.D. no. 308/96 titled as "*The management of M/s. Municipal Corporation of Delhi Vs. Its workmen Sh. Vishnu Dutt Sharma*", passed by the ADJ, Presiding Officer, Industrial Tribunal No. III, Delhi. By virtue of the impugned award, the labour court was pleased to hold that respondent/workman is entitled to the pay scale of a 'Mate' w.e.f. 01.04.1987 as he is entitled to be regularised to the post of 'Mate' instead of being regularised as 'Beldar'.

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FACTS RELEVANT FOR ADJUDICATION OF THE MATTER

2. Facts of the case as incorporated in the present writ petition is that the respondent joined petitioner organisation, allegedly on the post of Beldar/muster roll employee on 15.12.1979. The Respondent was assigned duties as a Mortarman and posted in Engineering Division XI, Shahdara Zone. Later, respondent was transferred to Division XIV. Vide *Office Order No. EA/Engg./Estt./88/554/1392*, services of the respondent were regularised w.e.f. 01.04.1987 on the post of Beldar with pay scale of Rs.196-232/-. Aforesaid regularisation was made as per the phase manner policy of the Petitioner.
3. Respondent raised an industrial dispute by claiming that he was entitled to be regularised in the pay scale of a 'Mate' from his initial date of appointment. The same was referred by the Government of NCT of Delhi to the Labour Court as per the following terms of reference :

"Whether Sh. Vishnu Dutt Sharma is entitled to the pay scale of Mate from his initial date of appointment w.e.f. 15/12/79 and if so, what directions are necessary in this respect ?"

4. Claim petition was filed on behalf of the respondent before the Labour Court claiming that he was appointed as Mortarman/Mate against a regular and permanent nature of work. However, despite this fact, he was paid at daily rates of wages while his other counterparts working in same capacity and dispensing similar duties have been paid at pay scale of Rs. 210-290/-. Further, he asserted in his claim petition that instead of being regularised at the post of Mate (pay scale Rs. 210-290/-), he was unfairly and discriminatory regularised as a Beldar

(with pay scale of Rs. 196-232/-). To counter the respondent's claim, the petitioner filed its written submissions wherein in rebuttal, it stated that respondent was never appointed in the capacity of Mortarman/Mate, therefore he cannot be allowed to claim the pay scale of the same.

5. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

- “1. Whether the claim is not maintainable on the ground of delay? (OM)*
- 2. Whether the cause of the workman has been espoused? (OPW)*
- 3. Whether the claim of the workman is barred as stated in preliminary objection no. 3 in the written statement? (OM)*
- 4. As in terms of reference.”*

6. In order to substantiate his case, the respondent examined 2 witnesses. He stepped into the witness box as WW-1. He tendered his evidence as WW-1/A and exhibited documents WW-1 to WW-11. Mr. K.C Gupta was examined as WW-2. He tendered his evidence as WW2/A and relied on documents WW-1/1 to WW-1/11. Despite opportunities, the Petitioner/Management failed to lead any evidence and hence the evidence of the Management was closed.
7. After hearing both the parties, the learned Labour Court passed the impugned award dated 02.07.2002. Vide the said impugned award, learned Labour Court observed that the petitioner organisation took false plea that respondent was never appointed as Mortarman/Mate and never made any representation to the Petitioner for seeking regularisation to the post of Mate. Since the action of the petitioner

was arbitrary and discriminatory, the learned Labour Court held that the respondent is entitled to the pay scale of Mate from 01.04.87 i.e. the date of his regularisation as he is entitled to be regularised to the post of Mate instead of being regularised at post of Beldar.

8. Aggrieved by the impugned award, the petitioner preferred the present writ petition.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

9. Ms. Aakanksha Kaul, learned counsel appearing on behalf of the petitioner vehemently argued against the legality of the impugned award. Learned counsel submitted before this Court that respondent was never appointed on the post of Mate but rather was employed in the capacity of Beldar on muster roll basis. The very prayer of respondent for grant of pay scale that of a Mate and regularisation on the same post, is therefore *prima facie* unsustainable. It is submitted on behalf of the petitioner that 'Mate' is a promotional post and no direct recruitment is conducted for the same. Further that as per the policy of regularisation followed by the petitioner, a list of muster roll employees are maintained as per the seniority determined by the date of employment. These muster roll employees are regularised in accordance with the phase manner Policy of the petitioner as per the seniority list as and when vacancies arise.
10. To cement her arguments, learned counsel relied upon the judgement delivered in *Municipal Corporation of Delhi Vs. Gauri Shankar & Ors.* reported as *1999 V AD (DELHI) 905* and prayed for the setting aside of the impugned award.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

11. *Per contra*, Mr. Bankey Bihari, learned counsel representing the respondent argued in favour of the impugned award. Tenability of the present writ petition is challenged on the grounds that the Labour Court via impugned award correctly decided the dispute in favour of the respondent. Counsel reiterated his earlier position that since the respondent was working as a mortarman and dispensing same duties as that of a Mate, he is very well within his right to demand the pay scale as provided to a Mate on the principle of '*Equal pay for Equal work*'. As per the 4th Pay Commission recommendations, both the posts of Mate and Mortarman fall within the same pay scale bracket of Rs. 210-290. Further it is submitted that he should have been regularised on the post 'Mate', however, petitioner unjustifiably and unfairly regularised service of respondent as a Beldar.
12. Further, learned counsel for the respondent threw light upon the fact that multiple communications were made to the petitioner requesting for regularising his services to the post of Mate, however, no response was received from the petitioner. Learned counsel also submitted before this Court regarding those employees who were working in same capacity (i.e. mortarman) as that of the respondent, however, were regularised as 'Mate' by the petitioner. Denying the respondent regularisation of service to the post of Mate while awarding the same to similarly situated counterparts is patently discriminatory and unfair.
13. With the purpose of buttressing his arguments, counsel has forwarded judgements delivered in *Standing Conference of Public Enterprises v. Govt. (NCT of Delhi)*, 2018 SCC OnLine Del 6909; *Bharat Bank*

Ltd. v. Employees, 1950 SCC 470; Western India Automobile Association v. Industrial Tribunal, Bombay, 1949 SCC OnLine FC 12; Crown Aluminium Works v. Workmen, 1958 SCR 651.

LEGAL ANALYSIS

14. This Court considered the rival submissions made by the learned counsel for the parties and have perused the documents placed on record and Judgments relied upon by the parties.
15. The issue to be considered in the present matter is *whether the respondent is entitled for the pay scale of 'Mate' from his initial date of appointment, i.e, w.e.f. 15/12/1979 or not.*
16. The learned Labour Court negated the plea that the respondent is entitled for the pay scale of Mate from the initial date of appointment, however, held that the respondent is entitled to be regularised to the post of Mate w.e.f. 01.04.1987 and also entitled for the pay scale attached to the post 'Mate' w.e.f. 01.04.1987.
17. The law regarding the regularisation of an employee is no more *res integra*. As per the settled position of law, the regularization can be done only as per the regularization policy declared by the Government and nobody can claim the regularization as a matter of right *de hors* the regularization policy. The Hon'ble Supreme Court reiterated this position in **State of Rajasthan and Ors. Vs. Daya Lal and Ors., (2011) 2 SCC 429**, which reads, inter alia, as follows:

8. We may at the outset refer to the following well principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions

for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the

scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

(See : Secretary, State of Karnataka vs. Uma Devi - 2006 (4) SCC 1, M. Raja vs. CEERI Educational Society, Pilani - 2006 (12) SCC 636, S.C. Chandra vs. State of Jharkhand - 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand - 2007 (15) SCC 680, and Official Liquidator vs. Dayanand - 2008 (10 SCC 1))”

18. In view of the legal position as discussed herein above, it is necessary to examine the facts of the present case. In the present case, it is an admitted position that the respondent was working as a daily wager employee of the petitioner w.e.f. 15.12.1979. It is also an admitted position that the respondent's service was regularised by the petitioner as 'Beldar' w.e.f. 01.04.1987. It is the case of the petitioner that they have done the regularisation as per their own regularisation policy-
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phase manner policy of regularisation. It is not the case of the respondent that his regularisation was in violation of the regularisation policy of the petitioner. The phase manner policy of the petitioner corporation was under consideration before this Court on many occasions and this Court consistently upheld the regularisations done in accordance with the said regularisation policy. In **Gauri Shankar (supra)** also, this Court examined the phase manner policy of the petitioner and upheld the regularisation done in accordance with the said policy.

19. The respondent placed on record the written statement filed by the petitioner before the Conciliation officer (Exhibit WW-1/6) in which it is stated that:

"At the time of regularisation there were insufficient posts of Mates and the workman was adjusted in the cadre of Beldar having sufficient number of posts and subjects to actual need. The regularisation of the workman was the exclusive prerogative of the Management, MCD which was required to be done in terms of Phased Manner Programme dated 20.11.78. It is further submitted that there are no regular posts of Motorman sanctioned with the Management, MCD and hence the question of regularising the workman in this cadre does not arise."

20. Hence it is evident that there was no vacancy available for regularising him against the post of 'Mate'. The respondent was not entered into the service of the petitioner in pursuance of any regular recruitment process. Regularization is not a mode of recruitment in Government service. However, in order to give relief to the employees who were in service for longer time, the Government, from time to time,

formulated policies for their regularization. The said policy formulation depends upon various aspects like vacancy position, requirement at the relevant time etc. Hence no employee can claim regularization as a matter of right. Regularization can be done only in accordance with the regularization policy of the Management.

21. In the present case, as per the regularization policy of the Petitioner, the respondent's service was regularized. The said letter dated 18.03.1988, vide which the service of the respondent was regularized, reads, inter alia, as follows:

“OFFICE ORDER

Sh. Vishnu Dutt S/o Sh. Prabhu Dayal, who has been working at XIV Division is hereby regularised on the post of Beldar in the pay-scale of Rs. 750-940 w.e.f. 1.4.87, on the general terms and conditions, which are applicable on the employees of Municipal Corporation of Delhi, mentioned overleaf.

In case you accept these conditions, you may appear at the office of Executive Engineer XIV on 22.3.88, otherwise it will be assumed that you are not willing to accept this post and your regularisation shall stand cancelled.

This order has been issued with the prior permission of Chief Engineer.

*Sd/-
Addl. Commissioner (Engg.)”*

22. It is to be noted that the content of this order very well expresses that candidate (respondent) is at liberty to accept or reject the regularisation. The petitioner offered the regularisation according to

their policy. If the same is not suiting the respondent, he could have rejected it. The respondent accepted the regularisation without any protest. The respondent accepted the regularisation to the post of 'Beldar', however, he wanted the pay scale attached to the post of 'Mate'. It is not legally permissible for the respondent to approbate and reprobate at the same time. Framing of policies are exclusively within the domain of the executive, no interference is called for unless it is malafide, or arbitrary.

23. In the present case, the respondent's service was regularised as 'Beldar' and hence he will be entitled for the salary attached to the post of 'Beldar'. The petitioner acted in accordance with the uniform policy applicable to all the daily wage workmen and hence there is no fault in the said regularisation order.

24. In view of the detailed discussions herein above, this court is of the considered view that the finding of the learned Labour Court is based on irrelevant considerations and hence the said finding is perverse and unsustainable in law. Hence, the present Petition is allowed and the impugned Award is hereby set aside. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 15, 2022

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