

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: May 24, 2023

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+ W.P.(C) 4299/2023 & CM APPL. 16583/2023 and CM APPL. 16584/2023

DINESH KUMAR SINGH

..... Petitioner

Through: Ms. Vijaya Singh and Mr. Rahul Kanaujia, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI
& ORS.

..... Respondents

Through: Mr. Namrata Mukim, Standing Counsel for R-1/MCD.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 16583/2023

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 4299/2023 & CM APPL. 16584/2023

3. The challenge in this writ petition is to an order dated December 05, 2022, passed by Central Administrative Tribunal ('Tribunal', in short) in O.A. 129/2022, where the Tribunal has in paragraphs 3 & 4 stated as under:

"3. The records of this case are called for. A letter dated 05.03.2021 was shown to us where the applicant took benefit of a forged letter No. DH685/COM/SDMC/2021 dated 5.03.2021.

4. In view of this, we are of the view that the applicant has

not come before this Tribunal with clean hands. Hence, the present O.A. is dismissed in terms of the decision of Hon'ble Apex Court in S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853, wherein it is held that where a person, who has not come with clean hands, the Tribunals or Courts shall not give any heed to such cases."

4. Learned counsel for the petitioner would submit that the petitioners is neither in receipt or aware of the contents of letter dated 05.03.2021, on which reliance has been placed by the Tribunal to state that the same has been fabricated while dismissing the petition. She by drawing our attention to the Original Application filed by the petitioner, wherein in paragraphs 4.18 and 4.20, the following has been stated to contend that the petitioner did make a disclosure of O.A. 2509/2019 and also that the petitioner had never been served with the order/letter of the Additional Commissioner dated 15.11.2021/05.03.2021:

"4.18 In furtherance to the reply of the Applicant, the Respondent No. 1 vide its Order dated 28.06.2019 bearing No. AO/SSA- III/CED/NDMC/2019/760 allowed personal hearing of the Applicant before the Addl. Commissioner (Estt.). The Applicant was intimated that the hearing was to be held on 05.07.2019 at 4:00 PM. The said Order was duly received by the Applicant only on 04.07.2019. The copy of the Order dated 28.06.2019 is bring annexed herewith as ANNEXURE A-16.

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4.20 It is humbly submitted that the present. Impugned Order is wrong, arbitrary and unsubstantiated. First of all, the Applicant was working as daily wager and duly covered under the Policy Circular as framed by the erstwhile MCD in J006. The Applicant's service's was duly regularized under the said Circular. It is needless to mention that the

Hon'ble High Court and this Hon'ble Tribunal, on various occasions have held that when a person has been working for more than 240 days in a year for a post, then that person cannot be termed as Leave Substitute Wager. Despite of the law laid down by the Hon'ble High Courts and this Hon'ble Tribunal, the Respondent served the Applicant with the Notice dated 02.05.2019 alleging that the Applicant was working as Leave Substitute Chowkidar. It is needless to mention that since 2002 till 2006 (the relevant period), the Applicant was working for more than 240 days in a year with Respondent as Chowkidar. It is very painful to state that after all these years of dedicated service and regularization of Applicant since 2007, now again the Applicant has been de-regularized and employed as Leave Substitute Chowkidar."

5. Infact, it is her submission that the subject matter of O.A. 2509/2019 was completely different, inasmuch as in the said O.A. the challenge was against converting the appointment of the petitioner from regular to contractual unlike in the present O.A. (wherein the impugned order is passed), the challenge was to his termination.
6. Learned counsel for the petitioner would also by drawing our attention to the reply filed before the Tribunal, contest the stand taken by the respondents in the O.A.
7. We say nothing on the said submission. Suffice to state the Tribunal could not have dismissed the petition in the manner it did in the impugned order.
8. Appropriate would have been that the Tribunal should have considered all the submissions made/stand taken by the parties and decided the Original Application on merits.
9. Having not done, we deem it appropriate to set aside the order passed

by the Central Administrative Tribunal dated December 05, 2022 and revive the O.A. on the board of the Tribunal with a direction that the Tribunal shall hear the counsel for the parties and pass a detailed and a speaking order.

10. For this purpose, we list the matter before the Registrar, Central Administrative Tribunal on July 10, 2023, when the parties shall appear.

11. Accordingly, the writ petition is disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 24, 2023/akc

