



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 24, 2023

+ W.P.(C) 7483/2023

AJAY KUMAR PANDEY

..... Petitioner

Through: Mr. K.K.Nangia, Mr. Krishan Kumar,
Mr. Shivam Bedi, Ms. Gargi Singh
and Mr. Manjeet Singh Saini, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL AND ORS.

..... Respondents

Through: Mr. Vaibhav Agnihotri, Adv. for
NDMC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. The challenge in this petition is to an order dated January 23, 2023 whereby the Central Administrative Tribunal (Principal Bench) New Delhi (for short hereinafter referred as 'Tribunal') has dismissed the O.A. No. 2577/2016 filed by the petitioner.

2. The claim of the petitioner before the Tribunal was with regard to payment of wages between the period from January 1, 2007 to March 8, 2010. The occasion to seek the payment arose because of the Tribunal's order dated November 27, 2015 whereby the Tribunal while disposing the



earlier round of litigation being OA 2962/2013, has stated in paragraphs 17 and 18 as under:-

“17. It is trite law, as has been pointed out by the applicant also, that if the applicant had continued to be on the rolls of the respondents in a master-servant relationship, was willing to work, and had reported for duty, and was then denied work by the respondents, he cannot be denied salary for that period, in his capacity as RMR, to which his services now stand regularized antedated from 02.01.2007. Day to day computation of wages can only be made by the respondents in the case of the TMR employees, and not in the case of RMR employees, who acquire a modicum of their service being regular, more so after their regularization.

18. As a result, the respondents are directed to verify and pass a reasoned and speaking order as to on which dates and for what periods the applicant had voluntarily absented, for which period they would be entitled to either grant him leave, or to treat that period as a period of voluntary absence, leading to sanction of Extra Ordinary Leave, and also determine the dates and periods on which he did report for duty, or had made himself available for duty before the respondents, but had been denied such engagement on the mistaken assumption that his status stood converted from RMR to TMR, which order regarding change and lowering of his status has already been set aside on 30.04.2009 by a Coordinate Bench while allowing his TA No.427/2009. The respondents shall pass the necessary orders within a period of three months, and grant the monetary benefits as may be admissible to the applicant thereafter, within a period of one month after passing of such speaking order. No costs.”

3. The respondents rejected the claim by stating in order dated May 26, 2016 as under:-

*“NEW DELHI MUNICIPAL COUNCIL,
OFFICE OF THE DIRECTOR (PERSONNEL)
PALIKA KENDRA NEW DELHI
No. D/1400/SOCEY Ee-X
Dated : 28.05.2016*

ORDER



Sub:- Regularization of service of Shri Ajay Kumar Pandey (Employee Code No. 310751) on the post of Beldar in the Civil Engineering Department of NDMC as per orders of Hon'ble Central Administrative Orders in O.A. No. 2962/2013 dated 22/11/2015 in the matter of Shri Ajay Kumar Pandey vs. NDMC

I compliance of CAT Principal Bench Delhi order in O.A. No. 2962/2013 dated 27/11/2015 on the above cited subject, the matter has been disposed of as under:-

2. The brief facts of the case are as under:-

Sh. Ajay Kumar Pandey joined as Beldar in 1997 on TMR basis.

He worked as RMR till 2006 with certain gap periods.

The RMR status granted to him was withdrawn on 07.08.2006 as this benefit was granted to him earlier in violation of Council Resolution dated 18.03.1999.

Sh. Pandey filed a Writ Petition in CAT to challenge above decision and Hon'ble CAT vide its order 30.04.2009 decided to confer him RMR status w.e.f. 31.12.2000 vide office order dated 15.12.2009.

Sh. Pandey did not work in NDMC during the period 01.01.2007 to 08.03.2010.

3. It is a fact that Sh. Pandey did not work in any office during the period 01.01.2007 to 08.03.2010 as he was removed from the post of RMR and was not taken on muster roll. The employee-employee relationship is built on the concept that a person (the employee) appears to provide his/her service to employer in return for which the employer appears to compensate with money and other considerations. It is obvious that when he was not on the roll of NDMC, no remuneration can be allowed to him based on the principle of "no work no pay" even though his services were regularized antedated in compliance of CAT order. The record of NDMC has been perused and it has been observed that there is no such record which can conclusively establish that he performed duty of any post.

4. In view of the position explained above and based on NDMC record, it has been decided that financial benefits for the period 01/01/2007 to 08/03/2010, when Shri



*Pandey did not work in office in NDMC, cannot be granted.
Accordingly, the matter is disposed of.*

*(Sd/-)
(Murari Lal Sharma)
Director (P)”*

3. The submission of Mr. Manjit Singh Saini and Mr. K.K. Nangia, learned counsel for the petitioner is that during the relevant period from January 01, 2007 to March 08, 2010 the petitioner has been representing to the respondents for giving him work at least as TMR. In support of their submissions they have drawn our attention to the letters dated March 07, 2008, April 02, 2008, wherein the petitioner has been representing to the respondents that he be allowed to work as TMR. We note vide letters dated January 19, 2016 and February 26, 2016, the respondents had asked the petitioner to furnish the duty period / leave period for the above period. The petitioner has vide his letter dated January 27, 2016, has stated that he has availed 29 EL from January 2, 2007 to January 22, 2016, which means he has given the details of leave taken even after January 3, 2016, that is beyond relevant period.

4. It is conceded that during the period of 2007-2010, the petitioner was in litigation before the Tribunal in TA No. 427/2009, which was decided on April, 30, 2009. It is also conceded case that the petitioner had not made any application before the Tribunal seeking a direction against the respondents to give him a job/take him on the rolls as an RMR or for that matter even as TMR. In fact the letters to which our attention has been drawn by Mr. Saini and Mr. Nangia would reveal that the petitioner was in fact calling upon the respondents to allow him to work as a TMR in that sense, the petitioner was



not gainfully employed. Presumption can be drawn, that as the petitioner was seeking employment as TMR, the petitioner was not engaged during the relevant period. The directions of the Tribunal in the order dated November 27, 2015 are very clear.

5. From the reading of paragraph 18, it is clear that the Tribunal has called upon the respondents to pass a speaking order by determining on which dates and for what period the petitioner had voluntarily absented, for which period they would be granting leave to him or to treat the period as a period of voluntary absence leading to sanction of extraordinary leave and also determining the dates and periods on which he did report to duty and made himself available for duty before them but had been denied such engagement. The respondents have passed an order dated May 26, 2016 wherein in effect they have stated that the petitioner was not on the rolls as such he is not entitled to wages for that period on the principle of 'no work no pay'. The Tribunal in the impugned order has stated in paragraphs 9 and 10 as under:-

"9. It is seen that the relief prayed for in this Original Application is, in fact, is a consequential relief to the relief which has been granted earlier in T.A. No. 427/2009 and one of the main reliefs in O.A. No. 2962/2013. For the sake of clarity, the prayer clause in the O.A. No. 2962/2013 is reproduced as under:-

"(a) quash and set aside the impugned Order dated 22-03-2010 (Annexure A-1) to the extent it denies the grant of financial benefits admissible to him for the period from 01.01.2007 to 16.03.2010; and consequently,

(b) direct the respondents to grant to the applicant the monetary benefits of regularization for the period from 2-01-2007 to 16-03-2010 as



recommended by Committee on Redressal of Grievances in terms of the order passed by the Hon'ble Tribunal (PB) in TA No. 427/2009 without further delay with further directions for payment of interest at the rate of 15% per annum on principal amount with effect from January, 2007 till the actual date is made."

(c) to pass any other order Is as this Hon'ble Tribunal may deem fit and proper and award the costs to the applicant against the respondents."

10. This Tribunal while deciding O.A. No.2962/2013 though did not reject the claim of the applicant but did not grant the relief as well rather gave an opportunity to the applicant to establish his claim before the respondents which he has not been able to sufficiently establish. We have no reason to question the contentions raised by respondents. In our view, the respondents have rightly rejected his claim of the applicant on the principle of 'no work no pay'. Accordingly, the O.A. is dismissed. No order as to costs."

6. From the above, we note the reasoning of the Tribunal, to accept the stand of the respondents is justified. Moreso, keeping in view the direction given by the Tribunal in its order dated November 27, 2015, inasmuch as the Tribunal has left it to the respondents to determine the aspect of the leave period / the period when the petitioner had reported for duty.

7. Mr. Nangia and Mr. Saini have primarily relied upon the aforesaid communications of the petitioner to contend that the petitioner was reporting for duty. The said plea has been rejected by us as the petitioner was in litigation during that period. Even otherwise, the issue whether the petitioner had reported for duty which is a pre-requisite for payment of wages between the period January 1, 200 to March 3, 2010 is a disputed question of fact. No document has been placed by the petitioner other than what has been referred to by Mr. Nangia and Mr. Saini in their submissions, to which we have made



a reference above, which are of the year 2008. The said document does not help the case of the petitioner.

8. If that be so, we are afraid, in the absence of any evidence, we cannot determine the issue raised in favour of the petitioner. This Court agrees with the final conclusion drawn by the Tribunal rejecting the prayer of the petitioner for payment of wages between the period January 1, 2007 to March 3, 2010 on the principles of 'no work no pay'.

9. One of the plea of Mr. Nangia is that when the petitioner has been regularised from a back date, i.e., from 2004, he is entitled to wages. The said proposition though looks appealing on a first blush, but cannot be applied to the facts of this case, more so, when the Tribunal vide its order dated November 27, 2015, had left the issue of payment of wages to be determined by the respondents.

10. In the facts of this case, we do not see any reason to interfere with the impugned order. The petition is dismissed. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JULY 24, 2023/*mr*