

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 07.12.2022
Pronounced on: 31.01.2023

+ **W.P.(C) 3382/2003**

SHANTI DEVI

..... Petitioner

Through: Mr. Jawahar Raja, Ms. Varsha
Sharma and Mr. Siddharth Sapra,
Advocates.

versus

DELHI JAL BOARD & ANR.

..... Respondents

Through: Mr. Rajiv Ranjan Mishra, Mr.
Manu Padalia and Ms. Suruchi
Yadav, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J

1. The present Writ Petition emanates from the Award dated 09.07.2001, passed by the learned Presiding Officer, Industrial Tribunal II, Karkardooma Courts, New Delhi, in I.D. No. 49/1992 titled as 'The management of M/s. Delhi Water Supply & Sewage Disposal Undertaking of the Municipal Corporation of Delhi Vs Its workman Smt. Shanti Devi as represented by Municipal Employees Union ("Impugned Award"). Vide the Impugned Award, the learned Labour Court dismissed the petition filed by the Petitioner and held that even though Petitioner is a workman under the I.D. Act, however, she has always been a part-time worker. The learned Labour Court

further held that the Petitioner/Workman was never taken as muster roll/daily wage employee by Respondent No.1/Management in its employment. Hence, she cannot claim any regularization of her service as full time Safai Karamchari as per the policy of Respondent No.1/Management. The Petitioner *vide* the present petition *is inter alia* praying to set aside the Impugned Award and further direct Respondent No.1 to regularize the services of the Petitioner with effect from 01.07.1987 i.e., her initial date of appointment as Safai Karamchari.

FACTS GERMANE TO THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. At the outset, it is the case of the Petitioner/Workman that she joined the employment of Delhi Water Supply & Sewage Disposal Undertaking with effect from 01.07.1982 as a Sweepress. She further claims that initially she was paid an amount of Rs. 40/- per month and was performing four hours of duty daily during the period from 17.01.1987 to 16.04.1987.
3. Further, on 17.01.1987, Respondent No.1 *vide* its order engaged the Petitioner/Workman as a full-time Sweepress for a period of 3 months or till a regular substitute was provided in her place, whichever was earlier.
4. On 17.04.1987, the Petitioner claims that she was removed from her services and was kept under enforced unemployment till June, 1987 when she was given the job on part-time basis on monthly wages of Rs. 100/- per month. It is also her claim that she was given assurances that she will be given full time job within few days. However, she was

completely ignored and meted out with hostile discrimination as juniors to her were regularized on the post of Safai Karamchari as a full time worker.

5. Subsequently, on 22.07.1987, Respondent No.1 while replying to the representation of the Petitioner for engagement as a Sweepress on muster roll stated that she can be engaged as a part-time Sweepress @ Rs. 40/- per month. Further, Respondent No.1 also asked the consent of the Petitioner if she was willing to work as a Part-time Sweepress.
6. Further again on 29.10.1987, Respondent No.1 while replying to another representation of the Petitioner for engagement as a Sweepress on muster roll stated that she can be engaged as a part-time Sweepress @ Rs. 100/- per month. Further, Respondent No.1 also asked the consent of the Petitioner if she was willing to work as a Part-time Sweepress without claiming regular appointment. Subsequently, the Petitioner *vide* her letter dated 30.10.1987, consented to being appointed as a part-time Sweepress @ Rs. 100/- without claiming any regularization.
7. On 20.03.1991, the Petitioner addressed an application to Respondent No.1 for regularization of her services and further payment of wages at full rates.
8. It is further the case of the Petitioner that on 30.05.1991, a demand notice (**Ex. WW1/1**) was sent by the Petitioner/Shanti Devi by registered post wherein the Petitioner demanded Respondent No.1 to regularize the services of the Petitioner/Shanti Devi as a full time Safai Karamchari in proper pay scale and allowances with retrospective effect since juniors to her have been regularized in

services with all consequential benefits. However, it was not replied by the Respondent No.1.

9. Respondent No.1 *vide* its letter dated 26.09.1991, after going through the case of the Petitioner rejected the case of the Petitioner to keep her on muster roll full time Sweepress.

10. Subsequently, an Industrial dispute was raised by the Petitioner before the Conciliation officer. However, the proceedings before the Conciliation officer failed.

11. Thereafter, the case of the Petitioner was referred to the learned Labour Court *vide* reference number F.24(2112)/92-Lab dated 27.07.1990, where the terms of reference were as follows:

“Whether Smt. Shanti Devi is entitled to be regularised as full time Safai Karamchari and if so, to what relief is she entitled and what directions are necessary in this respect?”

12. Further, on 31.08.1992, the Petitioner/Workman through the Municipal Employees Union filed its Statement of Claims. It was stated that the Petitioner had been performing the services of a Sweepress with Respondent No.1 since 01.07.1982 and she was given full assurance that she would be given full time job. However, the same was not provided and she was meted out with hostile discrimination, as juniors to the Petitioner were regularised.

13. Pursuantly, Respondent No.1 on 23.03.1993 filed its written statement refuting the claims made by the Petitioner/Workman. Respondent No.1 specifically stated that the Workman/Smt. Shanti Devi was working as a Sweepress on Mohalladari basis for 10-15 minutes in the morning. She was initially paid a sum of Rs. 40/- per month which

was later increased to Rs. 100/- and then to Rs. 150/- per month. It was further stated that she was engaged for a specific period till regular Sweepress was to be appointed. However, since the office of Respondent No.1 was not big enough, therefore, full time Sweepress was not required. Furthermore, it was also stated that no assurance was given to the Petitioner that she would be entitled to regularisation of her services.

14. The Petitioner also filed a rejoinder to reiterate her case set up in the statement of claim.
15. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

“1. Whether reference has been made mechanically and without application of mind? If so, its effect? OPM
2. Whether relationship of employer and employee exists between the parties? OPW
3. Whether the present dispute is not an industrial dispute and on that account, the reference is bad in law? OW4
4. Whether the applicant is not a workman within the definition of I.D Act? OPM
5. Whether the demand notice has been served on the management? If not, its effect?
6. As per terms of reference.”

16. Further, the learned Labour Court *vide* the Impugned Award dated 09.07.2001, dismissed the petition filed by the Petitioner and held that even though Petitioner is a workman under the I.D. Act, however, she has always been a part-time worker. The learned Labour Court further held that the Petitioner/Workman was never taken as muster roll/daily wage employee by Respondent No.1/Management in its employment.

Hence, she cannot claim any regularization of her services as full time Safai Karamchhari as per the policy of Respondent No.1/Management.

17. Aggrieved by the same, the Petitioner preferred the present Writ Petition challenging the Impugned Award. This Hon'ble Court *vide* its order dated 19.05.2003 issued notice to Respondent No.1.

SUBMISSIONS OF THE PETITIONER

7. Mr. Jawahar Raja, learned counsel for the Petitioner initiated his arguments by submitting that the Impugned Award passed by Respondent No.2 is bad, illegal, unjust and malafide. He submitted that Respondent No.1 is under obligation to regularize the services of the Petitioner from the date of her initial appointment.
8. Learned counsel for the Petitioner argued that Workman/Smt. Shanti Devi has been in employment of Respondent No. 1 for over two decades. She has been working against a permanent post and in spite of the fact that the Respondent had a vacant post, the services of the Petitioner have not been regularized. It is his contention that Respondent No.1 has been exploiting the Petitioner, by denying her the relief that she deserves, while at the same time workmen junior to her have been regularized.
9. Learned counsel for the Petitioner submitted that the Workman/Smt. Shanti Devi was performing the regular four hours' intense duty and even eight hours' duty during the period from 17.01.1987 to 16.04.1987. He further submitted that Shri Limaye/MW1, during his cross-examination, admitted that the Petitioner was working against a permanent nature of job and that the Petitioner was paid salary out of the general funds of the management. Furthermore, he also submitted

that Respondent No.1/Management had not produced any register/record of attendance of workers to suggest that the Petitioner/Workman was working as a part-time worker.

10. Mr. Raja further submitted that merely because a particular job was required to be performed during a particular time, would not make it a part time one. He further argued that the learned Labour Court has clearly failed to appreciate that the nature of job would be relevant in determining whether the said job was a part time one or not.
11. It was his contention that the Impugned Award is also violative of Resolution Nos. 1002 of 05.01.1967 and 709 of 20.11.1978 of the Standing Committee of the Municipal Corporation of Delhi. He argued that according to Resolution No. 1002 of 05.01.1967, the name of the Petitioner/Workman should have been taken on the seniority list of daily rated full time worker and should have been regularized in the service by seniority list. He further also argued that according to Resolution No. 709 of 20.11.1978, she should have been taken into employment as a regular employee in proper pay-scale and allowance should have been given from the initial date of her joining into the employment.
12. He submitted that Respondent No. 2 failed to appreciate that Respondent No. 1 had rejected the case of regularization of the Petitioner on arbitrary grounds that she was over aged, illiterate and part time. The Petitioner had been in employment since 1982 and had been satisfactorily discharging her duties as a *Safai Karamchari*.
13. For cementing the claims made by the Petitioner, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in

Gujarat Agricultural University v. Rathod Labhu Bechar and Others reported as (2001) 3 SCC 574, *Devinder Singh v. Municipal Corporation, Sanaur* reported as (2011) 6 SCC 584, *Bidi, Bidi Leaves' and Tobacco Merchants Association v. The State of Bombay* reported as AIR 1962 SC 486.

14. With these submissions, learned counsel for the Petitioner prays for the setting aside of the impugned Award.

SUBMISSIONS OF RESPONDENT NO.1

15. *Per Contra*, learned counsel for Respondent No.1, Mr. Rajiv Ranjan Mishra while relying on the Impugned Award vehemently argued that the present petition is bereft of any merits and should be dismissed in toto.
16. He succinctly submitted that the Petitioner was engaged as a Sweepress in the year 1982, on a Mohalladari basis, to clean the office of Zonal Revenue Office, Lajpat Nagar, consisting of one Hall and two rooms in the morning time only. Further in the year 1987, as there arose a need for Class 4 worker, the Petitioner was engaged as a casual laborer for 89 days. It is pertinent to note here that as the period of 89 days expired, the Petitioner continued to work as a Sweepress. He further submitted that initially, she was paid an amount of Rs. 40/- per month for her work which was later increased to Rs. 100/- per month and then Rs 150/- per month.
17. It is the contention for learned counsel for Respondent No.1 that admittedly, there was a break of about 3 years of service then she was again engaged as Sweepress. Further, the Petitioner herself had given

in writing that she will not claim for regularization for her engagement with Respondent No.1 as a Sweepress.

18. It is further his contention that the Petitioner herself in her cross-examination dated 28.03.1995 has categorically deposed that she was treated as part time employee only. Relevant part of the cross-examination dated 28.03.1995 is reproduced hereunder:

“It is correct that I joined into the employment of the mgt. w.e.f 1.7.82 as a Sweeper. it is incorrect that I was appointed on Mohalladari basis. It is correct that I was treated as part time employee. It is incorrect that in 1987 I abandoned the job of my own. Presently I am working with the management. It is incorrect that I am not entitled for regularization. It is incorrect that I am deposing falsely”

19. Mr. Mishra, learned counsel for Respondent No.1, in respect of the submissions of the Petitioner with regard to Resolution No. 1002 dated 05.01.1967 of the Standing Committee, submitted that it is a settlement between the Management of Municipal Corporation of Delhi and Delhi Nagar Nigam Mazdoor Union only and it does not flow from any statutory right. Thus it has no binding force on Respondent No.1. He further submitted that neither the Petitioner nor Respondent No.1 was part of the said settlement. *Ergo*, to say that the Petitioner is entitled for regularization on the basis of said settlement is without any substance and thus liable to be rejected.
20. Further, with regard to the submissions of the Petitioner with respect to regularization of people junior to her, learned counsel for Respondent No.1 submitted that the Petitioner did not even point out a single name, whose services has been regularized who were senior or

junior to her. Thus, it was a cock and bull story concocted with the sole intent to get a job with Respondent No.1.

21. Learned counsel for Respondent No.1 submitted that, it is settled law that the policy of the department cannot be given a go-by. No appointment can be made without following the due process. In the present case, the Petitioner was engaged on Mohalladari basis, without following the due process of law and it is relevant to point out here that it was the Petitioner herself who undertook not to claim for regularization. Hence, the Petitioner is not entitled for any relief of regularization or any equitable relief.
22. Lastly, he submitted that as per the affidavit sworn in the year 1997 by the Petitioner/Workman, she was 40 years old. Therefore, at present she would be around 69 years old. Therefore, the issue with regard to regularization at this age of the Petitioner is totally uncalled for.
23. Learned counsel for Respondent No.1 bolstered his submissions by relying on the judgment of the Hon'ble Supreme Court in ***Bank of Baroda v. Ghemarbhai Harjibhai Rabari*** reported as ***AIR 2005 SC 2799*** and of this Hon'ble Court in ***BSES Yamuna Power Limited v. The Presiding Officer & Anr.*** reported as ***Neutral Citation No. 2022/DHC/00365***.
24. With these submissions, learned counsel for Respondent No. 1 prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

25. This Court had heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

26. The issue to be decided in the present matter is the terms of reference itself, i.e. “*Whether Smt. Shanti Devi is entitled to be regularised as full time Safai Karamchari and if so, to what relief is she entitled and what directions are necessary in this respect?*”
27. Regarding the regularisation, it is well settled principle of law that regularisation could only be done as per the policy declared by the State/Government and nobody can claim the regularisation as a matter of right.
28. In the present case, the learned Labour Court held that the Petitioner had always been working as a Part time worker. No regularization policy of the Respondent was placed on record in which the part time worker can be considered for regularization. Learned Labour Court has dealt with this aspect in the impugned Award in detail. The relevant portion of the impugned Award is reproduced herein below:

“The workman has relied upon the policy framed by the management for regularization of the services of the muster roll/ daily wager in the proper pay scale. That document is Ex. WW1/13. The Municipal Corporation of Delhi passed the resolution No. 709 and accepted the policy of regularization as approved by the Standing Committee vide its resolution no. 519, dated 2.1.1978. The MW has admitted that the policy as per Ex. WW1/13 has been issued by the management. The management has not placed on the file any other policy. Therefore, the policy as referred in Ex. WW1/13 is to be taken into consideration to adjudicate upon the matter in dispute. That policy is regarding the regularization of the service of daily wage employees. It is not be regarding the regularization the regularization of the service of part time worker. There is nothing on the record to show that the services of the claimant was ever taken as daily wage or muster roll employee except for a brief period of three months of 17.____.1987 to 16.4.1987. Otherwise, she has always been working as part time workers and has been getting the monthly wage of Rs. 40/- which was later on increased to Rs. 100/- per month. Therefore, the

workman cannot take benefit out of the policy framed by the management for regularization of its daily wage employees as per policy Ex. WW1/13.”

29. The Hon’ble Supreme Court very recently in ***Union of India Vs Hmo Devi reported as 2021 SCC Online SC 899*** considered the issue of regularization of part time workers and held as under:

“28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.”

30. Learned counsel for the Petitioner sought to argue that the Petitioner/Shanti Devi has been employed by Respondent No.1 since 01.07.1982. Learned counsel submits that Respondent No.1/management regularized its muster roll employees who were performing regular nature of work for long time, hence the Petitioner was also entitled for regularization to the post of Safai Karamchari.
31. The Petitioner has always been working as a part-time worker in Respondent No.1/Management. The Perusal of the record shows that the Petitioner was initially engaged as a part time Sweepress. Later she was engaged for a brief period of 3 months as full time muster roll Sweepress in the Lajpat Nagar Zone, Office of the management. Again, after a short gap, she was engaged as a part time employee for a monthly wage of Rs. 40/- which was increased to Rs.100/-.
32. Further, as per the Affidavit of Mr. R.M. Limaye (MW1), wherein he deposed that the Petitioner/Shanti Devi worked for a period of only 20

to 30 mins. Further, he also deposed that there was neither any regular post of sweeper in the office of Z.R.O, Lajpat Nagar zone, Delhi nor the services of a regular sweeper were required as there is no work of sweeper for full time. Relevant part of the Affidavit of Mr. R.M. Limaye (MW1) is reproduced hereunder:

“That Smt. Shanti Devi who is around 50 years of age years engaged on Mohalladari basis to sweep/clean the office of Z.R.O. Lajpat Nagar, consisting of one hall (15' x 15' two rooms, (10' x 10' each and two smaller rooms in the morning after opening the office. She clean the office premises as abovementioned with Broom only and she takes only 20 to 30 minutes in the morning. Thereafter she is not required and she clean the office on the next day only. She is paid Rs.5/- per day for doing this cleanliness.

2. That there is no regular post of sweeper in the office of Z.R.O, Lajpat Nagar zone, Delhi nor the services of a regular sweeper is required as there is no work of sweeper for full time.”

(emphasis supplied)

33. Therefore, this Court is of the judicious opinion that in absence of any sanctioned posts in Respondent No.1/Management where the Petitioner was working as part-time Safai Karamchari, her services cannot be regularized.
34. Even otherwise, Respondent No.1 very well considered the representation of the Petitioner and after giving due consideration, her representation was rejected by Respondent No.1 vide its letter dated 26.09.1991. Further vide the noting, Respondent No.1 has also approved the Petitioner as a part-time employee @ Rs. 100/- per month. It is relevant to note here that the Petitioner had accepted the offer of Respondent No.1 and further also consented not to claim for

regularization. Further, the petitioner *vide* its letter dated 30.10.1987, also consented to being appointed as a part-time Sweepers @100/- without claiming any regularization.

35. Learned counsel for the Petitioner argued that the Impugned Award is also violative of Resolution Nos. 1002 of 05.01.1967 and 709 of 20.11.1978 of the Standing Committee of the Municipal Corporation of Delhi. Learned counsel for Respondent No.1 while countering the arguments of the Petitioner, argued that Resolution No. 1002 dated 05.01.1967 of the Standing Committee, is a settlement between the Management of Municipal Corporation of Delhi and Delhi Nagar Nigam Mazdoor Union only and it does not flow from any statutory right. Thus it has no binding force on Respondent No.1.
36. A bare perusal of Resolution No. 1002 dated 05.01.1967 of the Standing Committee suggests that it is a settlement between the Management of Municipal Corporation of Delhi and Delhi Nagar Nigam Mazdoor Union in the year 1967. As per this Resolution, the Labour Union demanded full-time employment for the muster roll/seasonal/part-time employees. The Management did not accept the said proposal. Therefore, it was agreed that a seniority list will be prepared for the daily wagers/seasonal /part time workers and vacancy will be filled on the basis of seniority-cum-suitability. The Petitioner also relied upon Resolution No. 709 of 20.11.1978 of the Standing Committee of the Municipal Corporation of Delhi. However, this is regarding the regularization of the daily wagers. This Court is of the considered view that both these Resolutions have no application in the present case.

37. The Petitioner has further taken the plea that Respondent No. 1 has acted discriminately against her and has instead regularized workers who were junior to her. In this regard, learned Labour Court has correctly observed that the pleadings and evidence as adduced by the Petitioner are vague as she has failed to put forward any particular instance where a worker junior to her or part time was taken on muster roll or was regularized in the proper pay scale of Safai Karamchari.
38. On consideration of the aforesaid precedents, this Court is of the view that learned Labour Court appropriately held that the Petitioner cannot claim regularization of her services as full time Safai Karamchari as the Petitioner has failed to establish that her services were in fact of a daily wage worker except for a brief period of three months from 17.01.1987 to 16.04.1987. The fact that the Petitioner may have been providing un-waivered services over a considerable period of time, does not confer upon the present Petitioner the fundamental right to be absorbed or regularized in service.
39. In view of the discussions herein above, this Court is of the considered view that there is no perversity or infirmity in the Impugned Award. In view thereof, this Court, while exercising its jurisdiction under Article 226 of the Constitution, is not inclined to interfere with the Impugned Award.
40. Hence the present writ Petition is hereby dismissed. No orders as to cost.

GAURANG KANTH, J.

JANUARY 31, 2023

PS