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

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Reserved on: 16.01.2023

Pronounced on: 07.02.2023

+ **W.P.(C) 15787/2004**

BHOLA THAKUR

..... Petitioner

Through: Mr. Anuj Aggarwal,
Ms. Shradha Adhikari and
Mr. Manas Verma, Advocates.

versus

MCD

..... Respondent

Through: Ms. Jainika Mohan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition filed under the Article 226 of The Constitution of India emanates from the award dated 07.03.2003 (*"the impugned award"*) passed by The Learned Presiding Officer, The Industrial Tribunal no. II, Karkarduma Courts, Delhi in I.D. No. 16/98. *Vide* the impugned Award, the learned Labour Court was pleased to decide the terms of reference in favour of the Respondent/management.
2. Aggrieved by the impugned award, the Petitioner/workman has preferred the present petition, seeking an appropriate writ for quashing the impugned award and subsequent reinstatement of the Petitioner/workman in service with all consequential benefits.

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**FACTS RELEVANT FOR THE ADJUDICATION OF THE
PRESENT WRIT PETITION**

3. The Petitioner/workman joined the Respondent/management as a Beldar w.e.f. 08.08.1996 on a monthly paid/muster roll basis. The service of the Petitioner/workman was terminated w.e.f. 15.05.1997 vide a termination letter dated 14.05.1997.
4. The Petitioner/workman moved his union to raise an industrial dispute on his behalf with respect to non-regularisation, denial of equal pay for equal work, and termination of service. The union served upon the Respondent/management a legal demand notice dated 09.08.1997 vide which cause of the Petitioner was espoused.
5. On 19.08.1997, an industrial dispute was raised by the Petitioner/workman before the Conciliation officer by filing Statement of claims. On being satisfied that an industrial dispute exists between the Respondent/management and the Petitioner/workman, the matter was referred for adjudication to the Industrial Tribunal under Sections 10(1)(c), 10(1)(d) and 12(5) of the Industrial Disputes Act, 1945 (*"the I.D. Act"*) with the following Terms of Reference

"1. "Whether the services of Shri Bhola Thakur daily rated/casual muster roll workman have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?"

2. "Whether Shri Bhola Thakur is entitled to wages as admissible to regular employees for his muster roll

employment i.e. 8.8.96 to 14.5.97, and if so, what directions are necessary in this respect?"

6. The Petitioner/workman filed the statement of claims wherein he alleged that he was discriminately denied the benefits of regularization and was illegally terminated by the Management/Respondent without complying with Sections 25-F, G, H of the I.D. Act. On the other hand, the Management/Respondent filed their written statement, wherein averments made by the Petitioner were denied. For furthering his case, the Petitioner examined himself as WW-1, while Management/Respondent produced Sh. Ravi Das as MW1, Sh. R.K. Dubas as MW2, Sh. G.S. Yadav as MW3.
7. Based on the arguments and evidence adduced by the parties, the learned Labour Court held *vide* impugned award dated 07.03.2003 that the signature of the Commissioner on Exhibit WW1/7 is evidently not genuine. It was further held that the requirement of conducting an enquiry is dispensed since the Commissioner himself directed removal of the petitioner on grounds that his signature on the application is false. Therefore, the Respondent/ Management had sufficient reason to remove the Petitioner from muster roll.
8. The Petitioner being aggrieved by the impugned award has preferred this writ petition, challenging the legality of the award.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

9. Mr. Anuj Aggarwal, learned counsel appearing for the Petitioner has submitted before the Court that the impugned award suffers

from perversity since the learned Labour Court failed to appreciate the evidence brought before it. The counsel has asserted that the learned Labour Court overlooked the fact that the Petitioner was appointed through the Executive Engineer and therefore he had no means to verify the authenticity of the signature attested on the application. Learned counsel further submitted that no vigilance enquiry was conducted against the Executive engineer whose signature was admitted to be genuine. In such circumstances, the termination of the Petitioner was prima facie illegal and against the principle of natural justice.

10. It is submitted by the learned counsel for the Petitioner that the Respondent/management's action of not conducting inquiry prior to the removal of the Petitioner has caused great prejudice to the Petitioner. The findings of the learned Labour Court that an enquiry is not required merely because the person whose signature was found to be not genuine has himself given direction of the removal, is erroneous and perverse. Further, it is averred by the counsel that in absence of any evidence to the effect that signature was forged by the Petitioner, he cannot be removed from the service without complying with Section 25-F of the I.D. Act.

11. Learned counsel has relied upon the judgments delivered in *Union Public Service Commission v. Dr. Jamuna Kurup and Others*, (2008) 11 SCC 10; *Satish Chand Gupta v. M.C.D.*, 2007 SCC OnLine Del 1732; *MCD v. Pushpa Rani*, 2012 SCC OnLine Del 3635; *Soran Singh v. Union of India*, 2008 SCC

OnLine Del 816 and order passed by the co-ordinate bench of this Court in **LPA 1176/2007** and **LPA 1184/2007**.

12. With these submissions, the learned Counsel for the Petitioner prays for setting aside of the impugned Award.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

13. *Per contra*, Ms. Jainika Mohan, learned counsel appearing for the Respondent/management has vehemently opposed the present petition on the ground that the impugned award does not suffer from any illegality or perversity. It is submitted that the Petitioner was engaged on muster roll/ daily wage basis and cannot be compared with the officials working on regular basis.
14. The learned counsel for the Respondent rebutted the allegations of the Petitioner that no vigilance enquiry was conducted to investigate into the issue of forgery. It is submitted by the counsel that the vigilance department has investigated the matter and *vide* its report dated 01.07.2002 held that the signature of the Commissioner and Engineer-in-chief are forged and fabricated in WW1/7. Since the appointment was made on basis of the forged signature of the officials, the service of the Petitioner was validly terminated.
15. For buttressing the arguments advanced, the counsel has relied upon judgment delivered in *Avtar Singh v. Union of India*, (2016) 8 SCC 471; *Rajasthan Rajya Vidyut Prasaran Nigam Ltd. v. Anil Kanwariya*, (2021) 10 SCC 136; *M.C.D. v. Praveen Kumar Jain*, (1998) 9 SCC 468.

16. With these submissions, learned Counsel for the Respondent prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

17. This Court has 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.

18. The issues raised for the judicial consideration of this Court are the terms of reference itself, i.e., (i) *Whether the services of the Petitioner have been terminated illegally and/or unjustifiably by the Respondent management and (ii) Whether the Petitioner is entitled to the wages as admissible to the regular employees for his muster roll employment period.*

19. It is an undisputed fact that the Petitioner was appointed as a Beldar w.e.f. 08.08.1996 on a daily wage basis and his service was terminated on 15.05.1997. The service of the Petitioner was terminated based upon the order dated 07.05.1997 (Exhibit MW3/1) passed by the Executive Engineer, which reads as follows:

"From the perusal of the applications for engaging Beldar on muster roll which have been approved by the Commissioner, it has been noticed that the signatures of the Commissioner seems to be incorrect and the applications have been sent to the Vigilance Department for further scrutiny in the matter. This has also been discussed with the Commissioner and he has desired that such persons shall be removed from the muster roll with immediate effect till the clearance is given by the Vigilance Department.

The copy of such applications are attached herewith for further necessary action by the concerned E.ES."

20. Later the service of the Petitioner was terminated vide letter dated 14.05.1997 (Exhibit MW3/2). The said letter, reads as follows:

"E-in-Chief vide his letter No. EO to E-in-C/97/118 dated 7/5/97 has directed that the following Beldars, who are workman under Division-XX at present (Ward 25 & 26) be removed from Muster Roll with immediate effect, till the clearance is given by the Vigilance Department.

1. Sh. Dara Singh S/o Sh. Ram Dhir Singh Ward-25
2. Sh. Sahib Singh Ward-25
3. Sh. Sanjay Kumar S/o Sh. Braham Singh Ward -25
4. Sh. Hans Raj S/o Sh. Raghuvir Singh Ward-25
5. Sh. Bhola Thakur S/o Sh. Nitya Nand Ward-25
6. Sh. Fool Singh S/o Sh. Daya Ram Ward-26"

21. The perusal of these letters shows that the Petitioner was removed from his muster roll employment subject to the outcome of the vigilance enquiry. However, the Respondent failed to disclose the outcome of the said vigilance enquiry. MW-1 in his cross examination stated that *'I can not say if any vigilance enquiry had taken place in respect of forgery of signature of Mark B on Ex.WW1/9'*. MW-3 in his cross examination stated that *'The signature of the Commissioner of MCD on the letter of approval of the employment of Bhola Thakur were found forged and a vigilance enquiry was held in this respect. The letter to that effect is MW3/1 and MW3/2 which are dated 07.05.1997 and 14.05.1997 respectively. The enquiry is still continuing in the vigilance Department.'* MW-3 further states that *'I have no knowledge against whom the vigilance action is continuing but it*

is against the workman for his signature of the Commissioner which were obtained by the Commissioner’.

22. Hence from the evidence by the Respondent Management it is evident that the vigilance enquiry was never concluded. The Petitioner was removed on the basis of an allegation subject to further enquiry. However, there was no final enquiry report holding the Petitioner guilty of the alleged forgery.
23. It is also pertinent to note that the allegation against the Petitioner was that the signature of the Commissioner of MCD (Mark-B) appearing on his application for appointment, Exhibit WW1/7 was forged. The Petitioner in his cross examination categorically stated that *‘I had submitted my application, Exhibit WW1/7 through Junior Engineer Sh. R.K Dabas posted at Punjabi Bagh. That JE called me after one month after submitting the application and told me that I had been taken in employment by the MCD. The JE did not hand over any letter of appointment or any other document regarding my appointment’.* From the evidence of the Petitioner, it is clear that the Petitioner submitted an application for appointment to the concerned JE and thereafter it was the said JE who processed it internally. MW3 in his cross examination deposed that the workman himself had obtained the sanction of his muster roll employment from the Commissioner of MCD. It is unbelievable that a muster roll beldar will directly approach the Commissioner, MCD to get the necessary approval for his appointment. Even otherwise also perusal of the WW1/7 reveals that the application submitted by the Petitioner for his

employment was marked to different officers in hierarchy till Commissioner, MCD. It is not possible that the Petitioner himself obtained these sanctions on his own. The truth of these allegations can be ascertained only by conducting a proper enquiry. However the Respondent failed to conclude the vigilance enquiry, in this regard. Hence the guilt of the Petitioner was not proved.

24. Upon perusal of the impugned award it reveals that the learned Labour Court completely ignored the evidence adduced by the parties on record. Learned Labour Court approved the decision of the Respondent/management of removing the Petitioner solely based on the fact that Commissioner, MCD denied his signature. The relevant extract of the impugned award has been reproduced as below:

“12. It is evident from the record that the signatures of the Commissioner were not found genuine on the approval of the appointment of the workman which led to the termination of the workman. Admittedly, no enquiry was conducted. I am agreeable with the argument advanced by Ld. Authorized representative of workman that action of management not holding the enquiry has caused the prejudice to the workman, particularly when the direction to remove the name of workman was given by the Chief Engineer itself, whereas the allegation are that the signatures of Commissioner on the application were not genuine. I the person whose signatures were not found genuine is himself giving the direction by observing that the signatures are not genuine, there is no scope for any further enquiry. Moreover tin the entire evidence, workman has not claimed that the signatures of the Commissioner on the applications were genuine. So in the absence of any such contention , the plea of management that signatures of Commissioner on the applications were not genuine, cannot be ignored consequently, the management was having sufficient reason for the removal of the workman and workman has failed to establish that termination of

workman was illegal. Issue is decided against the workman and in favour of management.”

25. It is evident that the learned Labour Court proceeded with the reasoning that since the Commissioner, whose signature was alleged to be attested in Ex. WW1/7 has himself identified disputed signature to be forged and hence directed for the removal of the Petitioner, no enquiry was required in such a matter. Neither Commissioner, MCD nor the concerned Chief Engineer was produced as a witness. No investigation or enquiry was conducted in this regard. In view of the detailed discussions herein above, this Court is of the considered view that the Respondent failed to substantiate the allegations against the Petitioner and hence the termination of the services of the Petitioner was without any valid reason.

26. The Petitioner was in employment with the Respondent only for a short duration of approximately 9 months, i.e, for the period from 08.08.1996 to 15.05.1997. The Petitioner was a daily wager muster roll employee and his termination effected approximately 25 years back. Hence even if the Petitioner's termination is held to be illegal, reinstatement in service cannot be termed as the proper remedy. Instead, the Petitioner can be awarded compensation in lieu of reinstatement. This Court is of the considered view that the Petitioner can be awarded compensation of Rs.1,00,000/- in lieu of his reinstatement, back wages & continuity in service.

27. The second part of the question to be decided is '*Whether the Petitioner is entitled to the wages as admissible to the regular employees for his muster roll employment period*'. It is well settled position of law that muster roll employees are not entitled to the wages as admissible to the regular employees. Regular employees are appointed through proper channel. They fulfil the eligibility criteria according to the Recruitment Regulations and appointed against regular posts. The responsibility attached to a regular employee and daily wager muster roll employee is totally different. Hence the Petitioner cannot claim pay parity with his regular counter parts.
28. In view of the detailed discussion hereinabove, the impugned Award is set aside and the present Writ Petition is partly allowed. The Petitioner is entitled for the compensation of Rs.1,00,000/- in lieu of reinstatement. The Respondent is directed to pay the said compensation amount to the Petitioner within 4 weeks from today. However, if there is any delay in releasing the compensation amount, the same will carry interest @ 9% per annum from the date of the termination till its realization.
29. No order as to costs.

GAURANG KANTH, J.

FEBRUARY 07, 2023

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