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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 12599/2023 & CM APPL 49641/2023

Date of Decision: **25.09.2023**

IN THE MATTER OF:

DELHI STATE CIVIL SUPPLIES CORPORATION LTD

ASPURTI BHAWAN, 709, AARAM BAGH,

PAHARGANJ, NEW DELHI-110055

THROUGH ITS CHAIRMAN-CUM-MANAGING DIRECTOR,

..... Petitioner

Through: Mr. P.K. Verma and Ms. Sweety Sood,
Advocates

Versus

SH.BHAWER SINGH,

S/O SH.NIHAL SINGH,

R/O WZ-42, SHADIPUR GAON,

MAIN BAZAR, NEW DELHI-110008

..... Respondent

Through: Ms. Monica Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant writ petition seeks to challenge the impugned award dated 01.09.2022, passed by the Labour Court, Rouse Avenue, New Delhi, in LIR No. 5612/2016, whereby, the Labour Court has directed for reinstatement of respondent-workman with 50% back wages.

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KUMAR KAURAV



2. Learned counsel appearing on behalf of the petitioner-management submits that the impugned award is *de hors* the provisions of law. He submits that the respondent-workman was employed on 18.05.1998 as a contractual employee and he served only upto January, 2004.
3. He further submits that once the period of contract was over, the respondent-workman cannot be re-employed or be regularised. He, then, contends that no workman can claim for regularisation as a matter of right. According to him, if there are other workmen who are regularised on the basis of their suitability, the same cannot be the reason to regularise all other employees. He, then, submits that there can always be varying factors in taking a decision by the management with respect to regularisation of a particular employee.
4. Learned counsel appearing on behalf of the respondent-workman, on advance instructions, opposes the submissions made by learned counsel for the petitioner. She submits that if paragraph no.43 of the impugned award is perused carefully, the same would indicate that the respondent-workman has categorically stated in his affidavit that the petitioner-management has adopted pick and choose method in the matter of regularisation.
5. According to her, the workmen, as mentioned in the affidavit, were regularised by the petitioner-management ignoring the claim of the present workman. She, therefore, submits that in the instant case, the respondent-workman had admittedly worked between the period of 18.05.1998 to 06.01.2004, with intermittent break and the concerned Labour Court has found that the respondent-workman is entitled for reinstatement with 50%



back wages, this court under Article 227 of the Constitution of India should not interfere into such a decision.

6. I have considered the submissions made by learned counsel for the parties and have perused the record.

7. Paragraph no.43 of the impugned decision reads as under:-

"Further in para No. 10 of the affidavit, the workman has deposed that the juniors are still working with managements and certain names have been mentioned in para No. 10 of the affidavit and management has not put any question to workman in his cross-examination in this regard and thus it is observed that the management has admitted the said submissions of workman. It is not made out by management that when there was no misconduct on the part of workman and there was no inquiry against him (as there was no question of same) then why he was segregated and left out when other persons were regularised."

8. It is, therefore, evidently clear that in paragraph no.10 of the affidavit, the respondent-workman has specifically deposed that his juniors were working with the petitioner-management. Neither a question was put forth to the respondent-workman in his cross-examination nor any satisfactory explanation was offered by the petitioner-management as to how the other workmen either who were working or regularised were better suited than the present respondent-workman.

9. Learned counsel appearing on behalf of the present petitioner by way of oral submission, tries to explain the position and submits that there can always be varying factor. The said position is not disputed. However, when opportunity was extended to the petitioner-management, the same should have been satisfactorily explained before the concerned court. In the absence of there being an appropriate explanation by the petitioner-management, the



concerned court cannot infer any reason as to why different criteria were adopted in the matters of regularisation of different employees.

10. In paragraph no.44 of the impugned decision, as has been referred by the learned counsel for the petitioner, it has come on record that the respondent-workman has worked till January, 2004 on contractual basis. The fact remains that when the other similarly situated employees/workmen, who were also working on contractual basis were regularised, there has to be a satisfactory reason as to why the present respondent-workman is not eligible to be regularised. Since such an explanation is missing in the instant case, therefore, the learned court below in paragraph no.49 has rightly concluded that the petitioner-management used to appoint the respondent-workman as a daily wager for such long periods to deprive them of various legal benefits despite the fact that the post held by employee was permanent in nature. The court below has noted that the present respondent-workman was left out while others were regularised. Paragraph nos.49 and 50 of the impugned award reads as under:-

“49. From all these facts, it is clear that management used to appoint the workmen as daily wager for such long period to deprive them various legal benefits despite the fact that post hold by employee was of permanent in nature and this person was left out while others were given post and this court held that such conduct on the part of management tantamount to unfair labour practice.

50. Thus on all counts, the case of management fails and there is no reason to deny the employment whose services have been terminated illegally. The initial onus has been discharged by workman. Accordingly, these issues are decided in favour of workman and against the management and it is held that services of workman was terminated illegally and justifiably by management.”



11. It is noted that the Labour Court has passed the impugned award after perusing the evidences of both the parties and has duly appreciated the facts and circumstances of the case.

12. On perusal of the averments made and the documents referred above by the parties, this court finds that the order of the Labour Court is well-reasoned and there is no ambiguity or jurisdictional error. This court does not find any cogent reason to interfere with the order of the Labour Court.

13. It is well settled that the scope of interference under Article 227 of the Constitution of India is only limited to correct the jurisdictional error of the inferior courts or tribunals. The Hon'ble Supreme Court in the case of ***Sadhana Lodh v. National Insurance Co Ltd***¹ has held that the supervisory jurisdiction conferred on High Courts under Article 227 of the Constitution of India is confined only to see as to whether an inferior court or tribunal has proceeded within its parameters and not to correct errors of all kinds in the decision. Also, the decision of the Hon'ble Supreme Court in the case of ***DN Banerjee v. PR Mukherjee***² restricts the invocation of Article 227 of the Constitution of India to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, or where grave injustice would be done unless the High Court interferes.

14. The Hon'ble Supreme Court in catena of cases in ***T.C. Basappa v. T. Nagappa***³, ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra***⁴,

¹ AIR 2003 SC 1561

² AIR 1953 SC 58

³ AIR 1954 SC 440



*Yakoob v. K.S. Radhakrishnan*⁵ and *Parry & Co. Ltd. v. P.C. Pal*⁶, while discussing the scope of the High Court under Article 226/227 of the Constitution of India in not interfering with the orders passed by the tribunals and courts inferior to it unless there exists a jurisdictional error.

15. In the case of *Iswarlal Mohanlal Thakkar v Paschim Gujarat Vij Company Ltd. & Anr.*⁷, the Hon'ble Supreme Court has held as under: –

“15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.”

[Emphasis supplied]

16. The above position of law has been reiterated by the Hon'ble Supreme Court in the case of *Rengali Hydro Electric Project v. Giridhari Sahu*⁸, wherein, the court after relying upon a catena of judgements has held as under:-

“20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of

⁴ AIR 1957 SC 264

⁵ AIR 1964 SC 477

⁶ AIR 1970 SC 1334

⁷ (2014) 6 SCC 434

⁸ (2019) 10 SCC 695



certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie.”

[Emphasis supplied]

17. In view of the aforesaid, the decision of reinstatement with 50% back wages is affirmed. The petition is accordingly dismissed alongwith the pending application.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 25, 2023

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