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

Date of Decision:- 12.05.2023

+ W.P.(C) 8989/2015 & CM APPL. 20261/2015 -Stay
NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr.Arun Birbal with Mr.Sanjay
Singh, Advs.

versus

RAM KUMAR Respondent
Through: Mr.Jawahar Raja, Ms. Megha De &
Ms. L. Gangmei, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred under Article 227 of the Constitution of India by the erstwhile North Delhi Municipal Corporation (now Municipal Corporation of Delhi) seeks to assail the award dated 05.09.2014 passed by the learned Labour Court in I.D.No.173/2010. Vide the impugned award, the learned Labour Court has after coming to a conclusion that the services of the respondent/workman were illegally terminated by the respondent w.e.f. 28.07.2010 without holding any inquiry, directed the petitioner to reinstate him with full back wages w.e.f. 01.07.2006, the date on which a demand notice seeking his reinstatement with back wages was issued on his behalf.

2. As per the factual matrix emerging from the record, the respondent had joined the services as a Mali in 1981 and was regularised w.e.f

01.04.1988. While he was working on the said post, an FIR No. 632/2003 under Section 342/376 Indian Penal Code came to be registered against him and consequently he was taken into custody. The respondent came to be acquitted of all charges in the criminal proceedings and was therefore released from jail on 16.04.2004. It is his case that he reported for assignment of duties to his superior officer on 04.06.2004 and submitted his joining letter but was not permitted to join duty. On 10.09.2004, the petitioner sent a notice to the respondent alleging therein that he was absent without leave since 29.12.2003 and must report for duty. The petitioner replied to the said letter on 20.09.2004 by stating therein that he had reported about his false implication in a criminal case to his immediate superior i.e. to Garden Chaudhary Richpal and had immediately upon being acquitted reported back for duty on 04.06.2004 but was not being permitted to do so despite his repeated personal visits to the office.

3. The respondent thereafter submitted further applications seeking permission to rejoin duty on 03.02.2005, 08.08.2005, 09.08.2005, 02.09.2005 and 20.06.2006 followed by a legal demand notice dated 01.07.2006. Upon receiving no reply, the petitioner approached the Conciliation Officer with his claim petition. The conciliation proceedings failed and consequently a reference to the learned Labour Court was made on 23.03.2010. Soon thereafter the petitioner issued a circular introducing bio-metric system of attendance and pursuant to the orders passed by the Division Bench on 26.05.2010 in W.P.(C) 854/2010 informed the Delhi Police about the list of employees who had not yet been covered under the bio-metric attendance system as also a list of the ghost employees i.e. employees whose name were on the roll but were not found to be existing.

The respondent's name was not included in the list furnished to the Delhi Police.

4. Upon the reference being made of the respondent's claim petition, the petitioner filed a written statement before the learned Labour Court wherein while admitting that the respondent's name had been struck off the strength w.e.f 28.07.2010 without holding any inquiry against him. It was contended by the petitioner that there was enough evidence to establish the misconduct on the part of the respondent, who had abandoned service. In the light of this stand taken by the petitioner, the learned Labour Court granted liberty to both sides to lead evidence and after consideration thereof, the Court came to a conclusion that the petitioner had failed to prove any misconduct on the part of the respondent.

5. After noticing the fact that no inquiry whatsoever had been ever conducted against the respondent, the learned Labour Court held that that despite opportunity being granted to the petitioner to lead evidence, it had not led even an iota of evidence to show as to whether the respondent's representation seeking permission to report on duty was ever considered. It therefore came to the conclusion that the termination of the respondent from service without considering his representation seeking permission to report on duty was illegal. Consequently, vide the impugned award, the petitioner was directed to reinstate the respondent with back wages w.e.f. 01.07.2006, the date on which the legal demand notice was served by him.

6. Being aggrieved, the petitioner approached this Court. On 08.03.2016, this Court stayed the operation of the impugned award and consequently the respondent has reached the age of superannuation on 31.01.2020 without being reinstated and has received back wages only till 31.01.2016.

7. In support of the petition, learned counsel for the petitioner while admitting that no disciplinary proceedings were ever initiated against the respondent, contends that even if no inquiry was conducted, it was always open for the petitioner to lead evidence before the learned Labour Court to prove the misconduct on the part of the respondent, which warranted his termination by the petitioner. By placing reliance on the decision of the Apex Court in *Engineering Laghu Udyog Employees' Union v. Judge, Labour Court and Industrial Tribunal and Anr.*[(2003) 12 SCC 1], he submits that the employer always has a right to adduce evidence before the learned Tribunal justifying his action even in a case where no domestic inquiry had been held against the employee. He, therefore, contends that in the present case, once it is an admitted position that the respondent, who was an employee of the petitioner, was taken into custody on 29.12.2003 pursuant to an FIR being FIR No.632/2003 registered against him and consequently remained in custody till his acquittal on 16.04.2004, he was clearly guilty of misconduct. Furthermore, despite repeated notices including the notice dated 10.09.2004, which was duly produced before the learned Labour Court, having been issued to the respondent to report for duty, the respondent failed to report for duty and, therefore, the petitioner was correct in drawing a presumption against him that he had abandoned his service and was therefore justified in terminating the services of the respondent.

8. Learned Counsel for the petitioner finally submits that the name of the respondent was also mentioned in the list of employees, who were not reporting for duty which was forwarded to the Delhi Police pursuant to the orders passed by this Court in W.P.(C)854/2010. He, therefore, contends

that the learned Labour Court failed to appreciate that this was a clear case where the respondent had committed grave misconduct and the petitioner's action in terminating his services was justified. He, therefore, prays that the impugned award be set aside and the writ petition be allowed.

9. On the other hand, learned counsel for the respondent supports the impugned award and submits that even if the petitioner despite not having conducted any domestic inquiry against the respondent, was entitled to lead evidence before the learned Labour Court to prove the respondent's misconduct, the fact remains that the learned Labour Court, after considering the evidence led by the petitioner came to the conclusion that there was no misconduct on the respondent's part. He submits that this is apparent from the fact that the respondent had not only taken a categorical stand before the learned Labour Court that he had duly informed his superior officer i.e. Garden Officer Richpal about him being embroiled in a false criminal case, in which he was later acquitted but had also duly replied to the petitioner's notice dated 10.09.2004 to report for duty. Furthermore, the respondent had been submitting representations right from 04.06.2004 seeking permission to rejoin duty. He therefore contends that the petitioner having not permitted the respondent to re-join duty even after being acquitted, the learned Labour Court was justified in holding that there was no abandonment of service by the respondent. He, therefore, prays that the petition be dismissed.

10. Before considering the rival submissions of the parties, it would be appropriate to note the relevant findings of the learned Labour Court in this regard as contained in para 17 to 20 of the impugned award. The same read as under:-

“17. On this issue workman in his affidavit specifically deposed that he has joined with the management in the year 1981 as Mali on daily wages basis and during continuance of his daily wages services he was regularized to the post of .Mali w.e.f 1.4.1988 and the fact is admitted by the official of the management who has been examined as MW1 .It has also come in evidence that workman was implicated in a criminal case on 29.12.2003 u/s 342/376 IPC registered vide FIR No 632/2003. It has also come in evidence that workman is acquitted of all charges leveled against him vide order dated 16.4.2004. Pursuant to his acquittal from the charges leveled against him vide order dated 16.4.2004 he approached the management to take him on duty. In support of his contention he also produced the document Ex WW 1/1 i.e. the demand notice dated 1.7.2006, copy of judgment dated 16.4.2004 by virtue of which the claimant was acquitted for the charges leveled against him , copy of letter Ex WW1/5 to Ex WW1/12 sent to the Assistant Director Horticulture Rohini Zone vide diary No 376 .On perusal of all these documents discussed above it is established that prior to the implication of the workman Criminal Case he was doing his duty regularly being daily wager and after his regularization w.e.f 1.4.1988 till his implication in criminal case i.e 29.12.2003 thereafter he remained in jail till his acquittal dated 16.4.2004.It has also come in evidence that after his acquittal he approached the management for taking him on duty but despite or repeated representation the management neither took him on duty nor considered the representation made by the workman .It has also come in evidence, rather admitted by MW1 during his cross examination that workman in this case was not the member of Ghost Employee pertaining to the document ex MW1/ 2 , thereby it is established that claimant in this case had taken steps to take him on duty after, acquittal from the criminal case. In such circumstance. It cannot be said that he was not continuous in service for 240 days in a calendar year.

18. On contrary, management failed to place on record even an iota of evidence showing that they have considered the representation of claimant/workman. They also failed to explain whether any inquiries were conducted against the workman prior to

his termination from the service rather it is admitted by MWL during his cross examination that no enquiry officer was appointed to look into the purported charge of unauthorized absence by the management as per the record .MWL also admitted that no charge sheet was ever served upon the workman for his purported unauthorized absence .In such circumstances I am of the considered view that workman succeeded in proving that he was _continuous in service w.e.f 1.4.1988. till his involvement in criminal case i.e till 29.12.2003, thereafter he made several representation for taking back in service but neither representation was considered nor order was passed after the conducted inquiry against the workman. In such circumstances , workman succeeded in 'providing that he was continuously in service w.e.f his date of joining as daily wager till his involvement in a criminal case This issue is decided accordingly in favour of workman and against the management.

Issue No. 2

ii)' Whether the workman has abandoned the service of the management on 29.12.2003 resulting termination on 28.7.2010.

19. In view of the observation given while deciding issue no 1, I am of the view that workman was in service prior to his involvement in a criminal case thereafter, he remained in jail and during the period of his detention he was not even put under suspension by the management as per procedure establish by law. It has also come in evidence that subsistence allowance was also not paid rather MW 1 during his cross specifically stated that he has paid only upto 29.12.2003 and since then till date neither substantial allowance nor salary is paid to the workman. Looking into numerous representation discussed above it is established that neither the representation were considered nor any order after conducting the enquiry was ever passed against the workman. In such circumstance , it cannot be said that the workman himself abandoned the service of management on 29.12.2003 and resulting his termination on 28.7.2010. Reliance is also placed on record decided cases cited as G.T. Lad & Others Vs Chemical and Fibers Of India Ltd AIT 1979 SC 582 wherein it is observed as under : In the present case to constitute abandonment there must be total or

complete giving up of duties so - as to indicate an intention not to resume the same .It has also observed that under the common law an inference than a employee has abandoned or relinquished the service is not easily drawn unless from the length of the absence and from' other surroundings circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention and normally such as intention can not be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has been determined in light of the surroundings circumstances of each case.

20 *In view of the observation given while deciding issue No. 1 and the observation given by their lordship in the aforesaid decided case , I am of the considered view that it is not a case of voluntary abandonment of service rather the absence of the employee in this case was beyond his control as he was implicated in a criminal case and he remained in custody till the date of his acquittal and immediately upon his acquittal he filed numerous representation in the office of the management to take him back on duty. In such circumstances, I am of the considered view that it is not a case of abandonment rather a case of illegal termination. This issue is also decoded in favour of workman and against the management .*

Issue No 3

iii) As per the reference Whether service of Sh. Ram Kuamt s/o Sh Madan Lal have been terminated illegally and /or unjustifiably by the management and if yes to what relief is he entitled and what directions are necessary in this respect .”

11. In the light of these findings of the learned Labour Court categorically holding that the respondent had submitted repeated representations seeking to rejoin duties and could therefore not have been said to have abandoned service, the only contention which the learned counsel for the petitioner has seriously pressed is that though neither any inquiry was conducted against

the respondent nor was any show cause notice ever issued against him informing about any likelihood of any disciplinary action being taken against him, the petitioner had led sufficient evidence before the learned Labour Court to demonstrate the misconduct on the part of the respondent. It is, therefore, urged that once the respondent was involved in a criminal proceeding on a grave charge under Section 342/376 of the IPC, it was clear that he was not fit for service. Furthermore, he had not joined duties for many years and therefore it was a clear case of misconduct on the respondent's part, which the learned Labour Court failed to appreciate.

12. Taking into account that the respondent was taken in custody on 29.12.2003 on account of serious criminal charges levelled against him in FIR No.632/2003, even though this plea of the petitioner appears to be attractive on the first blush, what needs to be appreciated is that the respondent was acquitted barely after three and a half months thereafter. The respondent had duly proved before the learned Labour Court that he had immediately after his acquittal, reported for duty. In fact, what emerges is that though the representations whereby the respondent had requested for being permitted to re-join duty were tendered in evidence by him before the learned Labour Court, the petitioner led no evidence whatsoever to show that the said representations were not received by it.

13. I am of the considered view that in the light of this admitted position that the respondent had submitted a representation as early as on 04.06.2004 and had also replied to the petitioner's communication dated 16.09.2004 vide reply dated 20.09.2004, which was followed by representations made on 03.02.2005, 08.08.2005, 09.08.2005, 02.09.2005, 26.06.2006 and finally a legal notice dated 01.07.2006, by no stretch of imagination, it can be said

that it was a case of abandonment of service by the respondent. The very fact that the respondent made repeated representations to the petitioner, none of which were replied to by the petitioner, in itself shows that the respondent was more than keen to rejoin duty, but was not permitted by the petitioner to do so under some misconceived notion that only because the respondent had earlier been arrested in a criminal case, he should not be permitted to re-join duty. In my view, if the petitioner wanted to take any action on this count, it was always open for the petitioner to initiate appropriate disciplinary action against the respondent, which it failed to do so. In case disciplinary action had been initiated against the respondent, he would have had the opportunity to plead that his embroilment in the criminal case was false as also to substantiate his plea that he had informed his immediate superior about him being arrested in a criminal case.

14. The petitioner's plea that the respondent's name was mentioned in the list of employees forwarded to the Delhi Police, who were not reporting for duty and therefore it must be presumed that he was not reporting for duties, needs to be noted only to be rejected. When it clearly emerges from the record that the petitioner did not permit the respondent to rejoin duty despite his repeated representations, the factum of his name being mentioned in the said list will be immaterial.

15. In the light of the aforesaid, I find that once the petitioner neither held any inquiry against the respondent for his alleged misconduct nor had been able to led evidence before the learned Labour Court to prove that the respondent had committed any misconduct, the learned Labour Court was fully justified in directing the petitioner to reinstate the respondent with back wages w.e.f. 01.07.2006. The respondent has consequently been denied back

wages for the period between 01.01.2004 to 30.06.2006 by the learned Labour Court itself and therefore the period during which the respondent was taken in custody has already been taken care of by the learned labour Court.

16. For the aforesaid reasons, I find absolutely no merit in the writ petition, which is, accordingly, dismissed.

17. Consequently, except for the back wages till 31.01.2006, which the respondent has already received, the petitioner will after adjusting the amount received by the respondent under Section 17B of the Industrial Disputes Act, extend to him, within eight weeks, all other benefits under the impugned award by treating him as having superannuated on 31.01.2020.

REKHA PALLI, J

MAY 12, 2023
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