



2024:DHC:7866-DB



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

+ LPA 1013/2024, CM APPLs. 59055/2024, 59056/2024,
59057/2024 & 59058/2024

MUNICIPAL CORPORATION OF DELHIAppellant

Through: Mr. Sanjeev Sagar, SC with
Ms. Nazia Parveen, Advs. along with Mr.
Banerjee, Dy. Director (Horticulture) MCD
and Mr. Ashwani

versus

ANIL KUMAR & ORS.Respondents

Through: Mr. Anuj Aggarwal, Ms.
Kritika Matta, Mr. A. Kumar and Mr.
Pradeep Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER (ORAL)

07.10.2024

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C.HARI SHANKAR, J.

1. This Letters Patent Appeal challenges an order dated 28 May 2024 passed by the learned Single Judge of this Court in WP (C) 10171/2017¹.

2. The writ petition arose out of an industrial dispute which came

¹ SDMC v Anil Kumar



2024:DHC:7866-DB



to be decided by the learned Industrial Tribunal by award dated 13 February 2017.

3. The respondents have been employed by the appellant as muster roll *Malis*². Their services were terminated on 25 December 2003. Alleging that the termination was in violation of Section 25-F³ of the Industrial Disputes Act, 1947, the respondents instituted an industrial dispute, which came to be decided by the learned Labour Court by an award dated 18 October 2007, directing the respondents to be reinstated in service. The SDMC challenged the said award before this Court by way of WP (C) 5994/2008, which was dismissed on 19 August 2008. The award was accordingly implemented and the respondents were reinstated in service in the post of *Mali*.

4. The respondents initiated a further industrial dispute claiming regularisation, which was referred for adjudication by the appropriate government by order dated 9 November 2012. The term of reference was thus:

“Whether the action of the management of Municipal Corporation of Delhi (MCD) in not regularizing the services of (I) Sh. Anil

² gardeners

³ **25-F. Conditions precedent to retrenchment of workmen.** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.



2024:DHC:7866-DB



Kumar S/o Sh. Ram Kishan (II) Hukum Chand S/o Sh. Faqueer Chand (III) Heera Lai, S/o Sh. Sohan Lai as “Mali” w.e.f. 01.04.05 and that of (IV) Sh. Pankaj Sharma, S/o Sh. Jaswant Sharma, (V) Anil S/o Sh. Govinda and (VI) Manoj Kumar, S/o Sh. Bhupender Dev w.e.f. 01.04.2006 as 'Mali' is justified or not? If not what relief the Workmen are entitled to and from which date?”

5. Statement of claim was filed by the respondents before the learned Industrial Tribunal⁴, seeking regularisation of their services.

6. The learned IT decided the reference by award dated 13 February 2017, holding the respondents entitled to regularisation as Mali with all consequential benefits w.e.f.⁵ 1 April 2005.

7. This decision was challenged by the SDMC before this Court by way of WP (C) 10171/2017, in which the impugned judgment has come to be rendered by the learned Single Judge.

8. The learned Single Judge has reproduced the relevant portions of the award passed by the learned Industrial Tribunal and has found the award to be sustainable in law and not meriting interference within the peripheries of Article 226 of the Constitution of India.

9. We have heard Mr. Sanjeev Sagar, learned Standing Counsel appearing for the appellant and Mr. Anuj Aggarwal, learned Counsel for the respondents.

⁴ “the learned IT” hereinafter

⁵ with effect from



2024:DHC:7866-DB



10. We are of the opinion that no case for interference with the impugned judgment of the learned Single Judge exists, *inter alia* because of paras 19 and 20 of the award of the learned Industrial Tribunal, which read thus:

“19. The Ld. A/R for the claimant had also invited the attention of this court to the statement of Witnesses of the management, particularly Sh. Banwari Lal, Ex.MW2. He has stated that he is presently. Administrative Officer(Horticulture Department (HQ), SDMC. *He has further admitted in his cross-examination that Sh Anil Kumar, Hukum Chand and Heera Lai are, all entitled for regularization w.e.f 1/4/2005 and Sh. Pankaj Sharma, Anil Kumar, Manoj Kumar Sharma are liable to be regularized from 01/04/2006 and their cases of regularization were pending in the court.*

20. *It is clear from the evidence on record as well as admission of Sh. Banwari Lai, MW2, Administrative Officer, Horticulture Department(HQ), SDMC, ND in his cross-examination that claimants were liable to be regularized w.e.f. 01.04.2005 and 01.04.2006. Sh. Banwari Lai MW2 has also clarified that because of pendency of the case, the services of the workmen could not be regularized. Accordingly, it is held that services of the claimants as per policy of regularization, discussed above is liable to be regularized from the dates mentioned in the reference.”*

11. Clearly, therefore, the MW2, who was cited by the appellant as its witness came in the witness box and deposed that the respondents were entitled to regularisation, w.e.f. 1 April 2005 and 1 April 2006.

12. Mr. Sanjeev Sagar submits that the said deposition was erroneous on facts. According to him, the respondents were not entitled to regularisation as per their seniority. He therefore submits that the statement of the witnesses of MW2 would have to be examined in the light of all other available evidence. He submits that



2024:DHC:7866-DB



the only workmen, who have been taken on rolls till 31 March 2000 were entitled to be regularisation.

13. It is well settled that a writ Court, exercising Article 226 / 227 jurisdiction over the decision of the learned Industrial Tribunal does not sit in appeal. It is not expected, or even entitled, to re-appreciate the evidence which was before the learned Industrial Tribunal. In *Krushna Narayan Wanjari v Jai Bharti Shikshan Sanstha*⁶, the proposition was stated thus:

“Unless the approach is wholly perverse in the sense that the Tribunal acted on no evidence, the High Court under Articles 226/227 is not justified in interfering with the award. It is not a court of first appeal to reappreciate the evidence.”

In its recent decision in *Bharti Airtel Ltd v A.S. Raghavendra*⁷, the Supreme Court held that, while the High Court was not wholly proscribed from reappraising facts while exercising writ jurisdiction over the award of an Industrial Tribunal, “there must be a level of infirmity greater than ordinary in a tribunal’s order, which is facing judicial scrutiny before the High Court, to justify interference”.

14. MW2 has clearly acknowledged the entitlement of the respondents to regularisation w.e.f. 1 April 2005 and 1 April 2006. The learned Single Judge has also noted this fact while opining that no case for interference with the decision of the learned Industrial Tribunal exists.

⁶ (2018) 12 SCC 620

⁷ (2024) 6 SCC 418



2024:DHC:7866-DB



15. We cannot accede to the request of Mr. Sanjeev Sagar that we must reassess the evidence to examine whether the deposition of MW2 was or was not correct. The deposition was rendered in cross examination and accordingly binds the appellant.

16. Clearly, the case does not merit any interference by us in appeal. The judgment of the learned Single Judge is, therefore, upheld in its entirety. The appeal is accordingly dismissed in *limine*.

17. Mr. Sanjeev Sagar points out that Pankaj Sharma and Kamlesh Devi had only been held entitled to monetary benefits by the learned Industrial Tribunal. It is clarified that their entitlement would be restricted to the said benefits.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 7, 2024/aky

Click here to check corrigendum, if any