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

\+ W.P.(C) 15349/2024, CM APPL. 64376/2024 & CM APPL. 64377/2024

SMT ALKA AND ORS .....Petitioners
Through: Mr. Basab Sengupta, Adv. with Mr. R.S. Kaushik, Adv.

versus

MUNICIPAL CORPORATION OF DELHI AND ANR .....Respondents
Through: Ms. Shivangi Kumar and Mr. Ankit Kumar Vats, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

<u>O R D E R (ORAL)</u>
% **04.11.2024**

<u>C. HARI SHANKAR, J</u>

1. This writ petition, under Article 226 of the Constitution of India assails, the following order passed by the learned Central Administrative Tribunal[1] in OA 1363/2024 on 12 September 2024:

> "1. The present O.A. is listed today for consideration on applicants' prayer for grant of interim relief.
>
> 2. By way of the present O.A. the applicants, (7 in number) have prayed for the following reliefs:
>
> > "Reliefs
> >
> > i) call for the original records regarding appointment/regularization of the applicants.

[1] "the learned Tribunal", hereinafter

ii) quash and set-aside the impugned cancellation order dated 19.04.2023 as non-est in the eyes of law (having been rendered without any enquiry mandated under DMC Act, 1957 & Regulations) and consequently

iii) reinstate the applicants to the job w.e.f. 19.04.2023 with all consequential benefits as admissible to other employees of MCD

iv) Pass any other order as deemed fit and appropriate.

<u>Interim relief:</u>

Regular appointment of the applicants have been made w.e.f. 01.04.2004. Therefore, it is humbly prayed that pending adjudication of the matter this Hon'ble Tribunal may graciously be pleased to order the respondents to grant admissible arrears of salary to the applicants from 01.04.2004 to 19.04.2023 (the purported date of cancellation of their appointments) except the salary already paid, since as per settled preposition of law termination of services cannot be given retrospective effect."

3. In response to notice, respondents have filed counter reply affidavit and therein they have prayed for dismissal of the O.A. with exemplary cost. In response thereto, the applicants have filed rejoinder and have reiterated their claim as made in the O.A. and also the grounds urged in support thereof.

4. In support of claim of the applicants for grant of interim relief, learned counsel for the applicants has argued as under:

i) Termination of services of the applicants with retrospective effect is bad and the same is without due process of law.

(ii) Appointments of the applicants are not in dispute.

(iii) The applicants are entitled for grant of admissible arrears of salary from the period of 01.04.2004 to 19.04.2023.

(iv) In written submissions filed by the respondents in O.A. No. 1865/2022, the respondents have stated that they have not stopped the applicants from joining and performing the duties. By referring to the said written submissions in O.A. No. 1865/2022 of the respondents, learned counsel for the applicant draws attention to a note dated 23.06.2023(page 222).

5. In reply, learned counsel for the respondents has argued that earlier the applicants had approached this Tribunal by way of O.A. No. 1865/2022 and aggrieved by the order of this Tribunal in the said O.A., the applicants had approached the Hon'ble High Court of Delhi by way of a W.P. and the said W.P. was dismissed as withdrawn. Thus, the present O.A. has been filed. She submits that the relief which is being sought by way of the interim relief in the present O.A. was not even sought by the applicants in O.A. No. 1865/2022 (Supra). She has further argued by referring to the assertions made in the reply, that the applicants were given work in August 2021, believing the order of regularisation to be true and correct, however, as soon as the respondents realised that the applicants have never worked at any point of time earlier, they were asked to submit a proof of their working, their previous employment with the respondents, their relieving slips issued from the offices where they had worked, a proof of salary for the relevant period and other such documents, that is when the applicants stopped reporting for duty. She has further submitted that FIR No. 780/2023 under Section 420/468/471/121-B IPC has been registered with Police Station Lajpat Nagar, New Delhi with regard to misrepresentation, falsification of documents, etc., and investigation is under process against the applicants alongwith a few others.

6. We have considered the submissions made by the learned counsels for the parties. From the order of this Tribunal in O.A. No. 1865/2022 (page 293) it appears that the applicants vide the said O.A. had approached this Tribunal seeking the following reliefs:-

> (i) That the Respondents may kindly be directed to follow the procedure of marking attendance as led down in MCD manual and be allowed to mark their attendance on the Attendance Register by their initials;
>
> (ii) That the Respondents may kindly be directed to pay the salary from the month of November, 2021 and continued to pay on the basis of their regular service as per Appointment letter dated 20.07.2021;
>
> (iii) That the applicants may kindly be given all consequential benefits and consequence of appointment order dated 20.07.2021.

7. Prima facie, we find that the respondents have not admitted that the applicants have worked for the period 01.04.2004 to 19.04.2023. It is also worth noting that the reliefs which the applicants are seeking by way of interim relief could have been sought and/or considered for being granted even in the O.A. No. 1865/2022.

8. Last but not the least, it is the applicants who have waited all along for two decades for what they are seeking by way of interim relief in the present O.A.

9. In such facts and circumstances, we are of the considered view that this is not a case where if interim relief is not granted, the applicants are likely to suffer irreversible civil consequences. Accordingly, the prayer for grant of interim relief is rejected.

10. Learned counsel for the respondents submits that the counter reply filed on behalf of the respondents is a detailed one. Learned counsel for the applicants admits that he has already filed rejoinder.

11. Pleadings are accordingly treated as complete.

12. However, learned counsel for the applicants seeks liberty to file certain additional documents, which as per him are very relevant and material for effective adjudication of the issue involved in the present O.A. Applicants shall be at liberty to file the same alongwith supporting affidavit within 2 weeks. Respondents shall be at liberty to file an affidavit in response thereto within 2 weeks thereafter.

13. List the matter for final hearing on 10.12.2024."

2. In our considered opinion, when providing for a remedy by way of a writ petition to the High Court against orders passed by the learned Tribunal in ***L Chandra Kumar v UOI***[2], the Supreme Court could not have envisaged that, against purely interlocutory orders, which are discretionary in nature and do not result in any irreparable loss to the applicant seeking interim relief, writ petition should be

[2] **1995 (1) SCC 400**

entertained by the High Court.

3. We are not seeking to state, as a proposition of law, that no writ petition would lie against any interim order passed by the learned Tribunal. However, three conditions which require cumulatively to be satisfied for interim relief to be granted are the existence of a *prima facie* case, balance of convenience and irreparable loss, if interim relief were not granted.

4. A reading of the impugned order passed by the learned Tribunal reveals that the interim relief sought by the petitioners is in the nature of arrears of salary. The petitioners have, in the prayer for interim relief, termed the arrears to be "admissible". The learned Tribunal has, after a careful perusal of the facts, come to a *prima facie* conclusion that the respondents were not admitting the fact that the petitioners had worked for the period 1 April 2004 to 19 April 2023, for which arrears were being sought.

5. In any case, we are not expressing any opinion on the correctness of the said observations. Suffice it to state that, as the interim relief sought was by way of payment of salary as well as arrears, it cannot be said that, if interim relief were not granted, the petitioners would suffer irreparable loss. In case the petitioners succeed in the OA, they no doubt be entitled to recover the arrears, perhaps with interest.

6. We also note that the learned Tribunal has listed the matter for final hearing on 10 December 2024. Obviously, the learned Tribunal is conscious of the urgency of the matter.

7. While declining to interfere in the present writ petition, we, however, merely request the learned Tribunal to, if possible and subject to its board and keeping in mind the priority to which the petitioners' OA is entitled, take up the matter for final hearing on 10 December 2024.

8. The petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

NOVEMBER 4, 2024
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Click here to check corrigendum, if any