



2024:DHC:4717



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 28th May, 2024**

+ W.P.(C) 10171/2017
SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Arunima Dwivedi, Ms. Pinky
Pawar and Mr. Aakash Pathak,
Advocates

versus
ANIL KUMAR & ORS. Respondents
Through: Ms. Suruchi Aggarwal, Sr. Advocate
along with Mr. Gurmeet Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India seeking setting aside of the Award dated 13th February, 2017 ("impugned Award" hereinafter) passed by the learned Presiding officer, Central Government Industrial Tribunal (CGIT) Cum Labour Court, Karkardooma Courts, Delhi ("CGIT" hereinafter) in I.D bearing No.166/2012.
2. The relevant facts leading to filing of the instant petition are as under:
 - a) In the year 2002, the petitioner i.e., South Delhi Municipal Corporation ("petitioner entity" hereinafter) employed the respondents ("respondent workmen" hereinafter) as muster roll '*malis*' under the



Horticulture Department Shahadara (North Zone), Delhi Municipal Corporation *vide* order dated 25th October, 2002.

- b) It is stated that *vide* order dated 25th December, 2003, the petitioner entity terminated the services of the respondent workmen without complying with the statutory mandate prescribed under the Industrial Disputes Act, 1947 (“I.D Act” hereinafter).
- c) The respondent workmen on 8th October, 2004, filed their statement of claim before the learned Labour Court IX, Delhi in case I.D No.885/2006. Thereafter, the learned Labour Court IX, Delhi passed an award dated 18th October, 2007, thereby, directing the petitioner entity to reinstate the respondent workmen back in service.
- d) Aggrieved by the above said award, the petitioner entity preferred a Writ Petition (Civil) No.5994/2008 before this Court, however, the same was dismissed *vide* order dated 19th August, 2008.
- e) Thereafter, on 18th June, 2010, the Competent Authority i.e., Additional Commissioner *vide* order dated 9th June, 2010 implemented the Award dated 18th October, 2007 as well as the order passed by this Court thereby, reinstating the respondent workmen back in service at the post of *mali*.
- f) The appropriate Govt. *vide* order dated on 9th November, 2012, bearing No. L-42012/46/2012-IR(DU), referred the industrial dispute for adjudication before the learned CGIT in the following terms:

“Whether the action of the management of Municipal Corporation of Delhi (MCD) in not regularizing the



services of (I) Sh. Anil Kumar S/o Sh. Ram Kishan (II) Hukum Chand S/o Sh. Faqueer Chand (III) Heera Lai, S/o Sh. Shohan 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?”

- g) Subsequently, on 30th November, 2012, the respondent workmen filed a statement of claim before the Presiding Officer, CGIT-cum-Labour Court, Karkardooma Courts, Shahadara in case I.D. No. 166/2012, seeking regularization of their services.
- h) Upon completion of pleadings, the learned CGIT framed five issues, and thereafter, passed the impugned Award dated 13th February, 2017, holding that the respondent workmen are entitled to be regularized at the post of ‘Mali’ with all consequential benefits with effect from 1st April, 2005.
- i) Aggrieved by the aforementioned Award, the petitioner entity on 25th October, 2017, has preferred the instant writ petition.
3. Learned Counsel appearing on behalf of the petitioner entity submitted that the learned CGIT erred in passing the impugned Award as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the present case, and therefore, the same is liable to be set aside.



4. It is submitted that the learned CGIT erred in law by passing the impugned Award as the same is illegal and has been passed against the provisions contained under the Industrial Disputes Act, 1947.

5. It is submitted that the second claim filed by the respondent workmen was barred by the principles of *res judicata* and delay and laches as at the first instance of litigation, the order dated 18th October, 2007 was against the respondent workmen and since the same has not been challenged, it had attained finality.

6. It is submitted that the learned CGIT erred in law by failing to appreciate the judgement passed by the Hon'ble Supreme Court in the case titled ***Una Rani v. Registrar, Co-operative Societies (2004) 7 SCC 112*** and ***State of Karnataka v. Uma Devi (2006) 4 SCC 1***, wherein, it was held that the Courts cannot direct the management for regularizing the daily wage workers.

7. It is submitted that since the respondent workmen were daily wage workers they had been paid for their service on a daily basis thus, they cannot raise an industrial dispute against the management for regularization of their service.

8. It is submitted that the claim preferred by the respondent workmen i.e., they were employed as muster roll *malis* in the Horticulture Department of Shahdara (North Zone) Municipal Corporation Delhi since 25th December, 2003 is false, instead they were engaged purely as daily wage workers.



9. It is submitted that respondent No. 4 had been disengaged from the services of the petitioner entity and the respondent No. 6 has expired hence, the question of his regularization does not arise. It is further submitted that respondent No. 1 to 3 and 5 have successfully recovered wages from the petitioner entity for the period prior to their joining after their reinstatement and respondent No. 6 has expired.

10. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity prays that the instant petition be allowed, and the relief as prayed, be granted.

11. *Per Contra*, the learned senior counsel appearing on behalf of the respondent workmen vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the impugned Award has been passed after taking into consideration the settled position of law and the entire evidence on record, hence, the same is liable to be dismissed.

12. It is submitted that the learned counsel appearing for the respondent vehemently opposed the present petition submitting to the effect that the reference is bad in law and has been made without application of mind.

13. It is submitted that the learned CGIT has rightfully held that the respondent workmen are entitled to be regularized as the workmen have continuously worked with the petitioner entity without any break in service.

14. It is submitted that *vide* Award dated 18th October, 2007, the learned Labour Court IX, Delhi, has directing the petitioner entity to reinstate the respondent workmen back in service which was affirmed by the Coordinate Bench as well as the Division Bench of this Court.



15. It is submitted that the respondent workmen are also entitled to seek regularization as admittedly the petitioner entity has been regularizing the services of daily wage workers on muster roll in a phased manner and as per their policy. To substantiate the same, the learned Counsel for the respondent workmen placed reliance upon Office Orders dated 9th January, 2001 and 29th March, 2006. It is further submitted that the petitioner entity had regularized six workmen retrospectively as well.

16. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent workmen prayed that the instant petition, being devoid of any merit is liable to be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the records. It is pertinent to mention here that despite granting numerous opportunities to the respondent workmen, no reply/counter affidavit as well as the written submissions has been filed on record. Therefore, this Court has referred to the Trial Court's record for the adjudication of the instant petition.

18. It is the case of the petitioner entity that the impugned Award is illegal and against the provisions of the Industrial Disputes Act, 1947. It is contended that the respondent workmen had no right in bringing the second claim as it is violative of the principles of *res judicata*. It has been further contended that the learned CGIT failed to correctly appreciate the ratio passed by the Hon'ble Supreme Court in the cases titled ***Una Rani v. Registrar, Co-operative Societies (2004) 7 SCC 112*** and ***State of Karnataka v. Uma Devi (2006) 4 SCC 1***, wherein it has been categorically held that



Courts cannot direct the management for regularizing the daily wage workers.

19. In rival submissions, the learned counsel appearing on behalf of the respondent workmen have contended that the instant petition is misconceived, and the impugned Award has been passed taking into consideration the settled position of law. It is contended that the learned CGIT has rightfully held that the respondent workmen are entitled to be regularized as the workmen have continuously worked with the petitioner entity without any break in service.

20. At the outset, this Court deems it imperative to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Court below *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Court below adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a Court below only in cases where there is a gross



violation of the rights of the petitioner and the conclusion of the Courts below is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

21. Now advertent to the issue in hand, the petitioner entity has approached this Court seeking setting aside of the findings arrived at by the learned CGIT in I.D bearing No.166/2012 *vide* the impugned Award dated 13th February, 2017. The relevant paragraphs of the impugned Award are reproduced herein below:

“.....Issues No. 1 &2

11. Both these issues are being taken together for the purpose of discussion as they are inter-related and can be conveniently disposed of. It was submitted on behalf of the management that there is no espousal in the present case and no notice of demand was served on the management. As such the claim filed by the claimants is not legally maintainable.

12. Per contra Sh. B.K. Prasad contested on behalf of the claimants that the matter was raised in the Union actually espoused by the Members of the Union. And in this regard Sh. B.K.Prasad referred to the statement of claim as well as his affidavit Ex. WW1/A. He has clearly stated in his cross-examination. Claimant moved a written complaint and configuration was taken by the Union. It was further clarified by him the copy of the complaint was not filed in this Tribunal. He has also made reference to certificate Ex. WW1/I which shows that MCD General Mazdoor Union is duly registered



under the Trade-Union Act. Ex.WW1/2 is the copy of the letter sent by the management to the union which was called for negotiation and correspondence to MCD.General Mazdoor Union. There is no evidence to the contrary adduced by the management so as to show that Union of the claimant headed by Sh.B.K.Prasad, WW1 is not duly registered and the matter was not discussed in the meeting of the Claimant/Union. It has been held in the case of the workmen of MCD Vs MCD (Writ Petition © No. 13023/2005) decided on 06/08/2007 by the Hon'ble High Court of Delhi wherein a similar contention, was raised that matter was not raised by the workmen by raising any demand through the Union nor any notice was served upon the management. After placing reliance upon the case of Shambhu Nath Goyal Vs Bank of Baroda, Jullundur reported as (1978) 2 SCR 793, wherein the Supreme Court after referring to Section 2(K) of the Industrial Dispute Act, 1947 which defines "Industrial Dispute", held as Under:-

"A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute Or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into-existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 2 forbids going on strike without giving a strike, notice. The key words in the definition of industrial dispute are ('dispute' or 'difference'. What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd. (1960) 1 All E.R. 244 at 249. Lord Denning while examining the definition of



expression Trade disputes' in Section of Trade Disputes (Arbitration and Inquiry) Ordinance of Tribunal observed: "by definition a 'trade dispute' exists whenever a 'difference exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening."

Thus the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of Labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

13. Keeping in view the aforementioned judgment, which clearly notes that there is no specific requirement in the I.D.Act that a dispute has to be raised only by making a demand in writing. Any other interpretation given to Section 2(k) of the I.D.Act which narrows the definition of the term, "industrial dispute" is not permissible. Thus, it cannot be held that merely because a demand was not given in writing by the petitioners to the respondent management, there does not exist any industrial any industrial dispute between the parties. Making a written demand is not a sine qua non for raising an industrial dispute. Once the appropriate Government passed an administrative order referring an industrial dispute for adjudication to the industrial adjudicator, it has to be assumed that an administrative decision was arrived at by the Government after examining the material placed on the record that there exists an industrial dispute. Learned counsel for the respondent has no quarrel with the aforesaid position of law.



14. It is, thus, clear that the claimant has to simply raise a demand to the Union so that Union could take up the matter with the management for negotiation and conciliation. Thus, the contention of the management that matter was not espoused through the union is meritless and statement of Sh.B.K.Prasad, WW1 is sufficient to meet the legal requirement of raising a dispute/demand notice and its espousal by the union. The expression " espousal" has not been defined under the Act. However from pronouncement made by the courts, it is clear that it means that disputes of the workmen, is adopted by the union as its own dispute and considerable number of workmen support the same. The expression "Union" as used in Section 2(k) of the Act merely indicate the Union to which to the workman belongs even though it may be union of the minority of workmen. The Espousal/Sponsorship certificate WW1/15 shows that .MCD General Mazdoor Union in its meeting held on 1-12-2010 decided to espouse/sponsor the cause of S/Sh. Anil Kumar S/o Sh. Ram Kishan, Hukuam Chand S/o Sh. Faqeer Chand, Heera S/o Sh. Sohan Lai w.e.f. 01-04-2005 and Pankaj Sharma S/o Sh. Jaswant Sharma, Manoj Kumar Sharma S/o Sh. Bhupender Dev, Anil S/o Sh.Govinda w.e.f 1-4-2006 for grant of regularization. Since the evidence adduced by the workmen regarding their raising demand and espousal through the union appears to be inspiring and credible, as such, both these issues are decided in favour of workman and against the management.

Issue No.3, 4 & 5

15. All these issues are taken together for the purpose of discussion. During the course of arguments the Ld. A/R appearing on behalf of the claimant made reference to Para 2 of the statement of claim, containing detailed of each claimant regarding their initial appointment on muster roll are mentioned, in Para-2 of the written statement, management has not specifically denied the factum of their engagement, as it is a matter of record. It is rather specifically admitted by the



management that Sh. Anil Kumar, Sh. Anil & Sh. Manoj Kumar Sharma are working in the Central Zone of the management No.1/SDMC and Sh. Hukam Chand is working in the West Zone of the Management No.1/SDMC after their reinstatement. However Sh.Pankaj Sharma has already been disengaged vide order No. DDH/ADH/CNZ/2011-12/22 dated 09.04.2012, as he was remaining absent since 01.08.2011.

16. During the course of arguments, the Ld. A/R for the claimants invited the attention of the Tribunal to the failure report i.e. Ex. WW1/3 which clearly shows that there is mention of the names of all the claimant in the said report and their dates of initial employment on muster roll and termination are inconsonance with Para-2 of the Statement of Claim as well as Para-3 of the Affidavit, which is exhibited as Ex. WW1/A. The Management has not disputed the recital of dates contained in the said report. The Office Order Ex.WW1/4 clearly shows that award passed by the Labour Court was implemented by reinstatement of the claimants herein on 18/06/2010. There is another office order Ex. WW1/5 which shows that Sh.Hukam Chand, Daily Wager Mali/Beldar was reinstated with immediate effect vide Office Order No. ADC/AO(Hort)/HQ/DA-IX/2009/1910 on 23/10/2009. Similarly, Sh.Heera Lai S/o Sh. Sohan Lal, daily wager Mali/Beldar was reinstated with immediate effect in view of the award dated 18-10-2007.

17. Office Order No.ADC(Hort)/AO(Hort)/DA-IV/2007/794 dated 09/01/2007 Ex.WW1/10 is the list of the workmen whose services were regularized w.e.f. 1-4-2006 with the approval of worthy Commissioner, MCD in respect of workmen working in the post of Mali in the pay scale of Rs.2550-3200. Similarly Office Orders dated 29/03/2006 which are exhibited as Ex. WW1/11, Ex. WW1/12, Ex. WW1/13 show the list of workmen whose services were regularized after approval of Addl.Cm(Engg), MCD, Delhi.

18. That MCD General Mazdoor Union's letter addressed to Commissioner, MCD, Delhi of October 11,2010 Exhibit



WW1/14 clearly shows that request was made by Sh.B.K.Prasad to the management for regularization of S/Sh. Anil Kumar, Pankaj Sharma, Anil, Manoj Kumar Sharma and Hukam Chand as per policy of the management with retrospective dates i.e. 01-04-2005 of Sh Anil Kumar and 01-04-2006 of S/Sh.Pankaj Shama, Anil, Manoj Kumar Sharma & Hukam Chand.

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.

21. Admittedly, Shri Heera Lal expired on 30/08/2011 and this fact was not disputed by either of the parties Since service of Sh. Heera Lal is liable to be regularized w.e.f. 1-4-2005, as such his legal heirs are entitled for all monetary benefits.

22. So far as case of claimant, Sh.Heera Lal, deceased is concerned, Smt.Kamlesh, widow of Late Sh.Heera Lal entered into the witness box and supported the case on behalf of her husband. She has been given employment on compassionate



grounds on muster roll by the management. The law is fairly settled that if a workman dies during the pendency of proceedings or he is found entitled to monetary benefits in an award/Judgment passed by the Competent Court after his death, in that eventually, the benefit of such an award or judgment is granted to the legal heirs of the deceased workman who are representing the estate of deceased workman. Accordingly, it is held that Smt.Kamlesh is entitled to all the benefits which accrued to her husband till the date of his death i.e. 30.08.2011.

23. So far as claim of Sh.Pankaj Sharma is concerned, he has not entered into the witness box to support averments contained in the statement of claim. His services was terminated by the management on account of his unauthorized absence vide Ex. MW2/1 dated 09.04.2012. It was urged on behalf of the claimant that monetary benefits can be given to this workman also till the date of his termination i.e.dated 09/04/2012, Ex.MW2/l. There is no merit in the contention of the claimant in as much as the case of Pankaj Sharma is no way different from the other claimants. In this regard, reference can be made to the case of State of Uttar Pradesh and others Vs Arvind Kumar Srivastava and others, (2015 SCC it is held as under:-

"The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the court earlier. They are not to be treated differently.



24. *It is clear from the above passage that benefit of judgment/Award can be extended to all the similarly situated person though they were not party to the case. In the present case Sh.Pankaj Sharma is directly party to the present case though he has not entered into the witness box to support his case. Merely non-appearance of a party in a case would not be fatal unless examination of such a party was essential to unfold the controversy or prove a particular fact. Resultantly, it is held that claimant Sh.Pankaj Sharma is entitled to the monetary benefits till the date of his termination or disengagement.*

Issue No.3 is decided accordingly.

25. *As a sequel to my aforesaid discussion, it is held that service of claimants S/Sh. Anil Kumar, Hukam Chand and Heera Lal is liable to be regularized w.e.f 1/4/2005 and that of claimant Sh.Anil Kumar and Sh. Manoj Kumar w.e.f 1/4/2006 as Mali with all consequential benefits which has been given to similar workmen. It is also held that claimant Sh.Pankaj Sharma would be entitled to monetary benefit until his disengagement . Smt. Kamlesh, Widow of Sh.Heera Lai is held entitled to monetary benefits which had accrued in favors of her husband namely Sh.Heera Lal till the date of his death i.e. 30/08/2011.*

An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.....”

22. Upon perusal of the impugned Award, it is made out that whilst adjudicating upon issues no.1 and 2, the learned CGIT noted that the petitioner entity contended that the espousal of the industrial dispute is not proper and no demand notice was ever served upon the petitioner entity by the respondent workmen. Hence, the said claim is legally not maintainable. On the contrary, the respondent workmen contended that the said industrial



dispute has been duly espoused by the members of the MCD General Mazdoor Union and placed reliance upon Ex.WW1/A wherein it has been stated that the claimants moved a written complaint before the Union to which configuration was taken. Furthermore, reliance is placed upon Ex.WW1/2, a letter sent by the petitioner entity to the Union for negotiating the said dispute.

23. *Qua* issues no.1 and 2, placing reliance upon the judgement passed by the Hon'ble Supreme Court in case titled ***Shambhu Nath Goyal Vs Bank of Baroda, Jullundur (1978) 2 SCR 793***, the learned CGIT observed that the Industrial Disputes Act, 1947 does not specify any requirements for raising a demand by putting it in writing thus, the argument that there does not exist an industrial dispute merely on the pretext that there was no demand made by the respondent workmen in writing, is untenable. It further observed that once an administrative order has been passed by the appropriate government referring the said dispute, it is assumed that the same was arrived at after placing due reliance upon the material on record that there exists an industrial dispute.

24. With regard to the contention raised by the petitioner entity relating to the espousal being improper, the learned CGIT observed that the same cannot be considered as a perusal of the Ex.WW1/15, which is the espousal certificate, it can be categorically noted that the MCD General Mazdoor Union had decided to espouse the dispute for seeking regularization of the respondent workmen *vide* its meeting dated 1st December, 2010. Hence, the



said issues were answered in favor of the respondent workmen and against the petitioner entity.

25. *Qua* issues no.3, 4 and 5, the learned Adjudicator taking note of the Office Order No. ADC(Hort)/AO (Hort)/DA/ 06/1302 dated 29th March, 2006, by way of which the daily rated workers who were engaged w.e.f. 1st April ,1998 to 31st March, 2000 were regularized w.e.f. 1st April, 2005 opined that as per the policy of the management, regularization of daily wage workers on muster roll must take place in a phased manner.

26. The learned CGIT further placed consideration upon the cross-examination of MW2 i.e., Administrative Officer of the Horticulture Department, SDMC, New Delhi wherein it was categorically stated that the respondent workmen were entitled to be regularized with effect from 1st April, 2005 and 1st April, 2006 and due to the pendency of the case, the said services could not be regularized. Taking note of the above, the learned CGIT opined that the services of the respondent workmen, are entitled to be regularized from the date of the reference as per the policy of regularization of the petitioner entity.

27. Furthermore, taking note of the admitted fact that the workman namely Shri. Heera Lal expired on 30th August, 2011 and the petitioner entity granted compassionate employment to his wife Smt. Kamlesh, the learned CGIT, opined that she is entitled to receive all the benefits accrued to her husband till the date of his death.

28. The learned CGIT further clarified that although the services of Mr.Pankaj Sharma/respondent no.4 herein, were terminated by the petitioner



entity on 9th April, 2012 however, he is entitled to the all monetary benefits till the date of his termination or disengagement.

29. The learned CGIT bearing the reasoning afforded to each of the issues answered the reference in favor of the respondent workmen and against the petitioner entity, thereby, holding that the respondent workmen are entitled to be regularized at the post of 'Mali' with all consequential benefits with effect from 1st April, 2005. Furthermore, the respondent no.4 herein is entitled to receive all monetary benefits till the date of his termination or disengagement and Smt. Kamlesh wife of Shri. Heera Lal(deceased)/respondent no.6 herein is entitled to receive all monetary benefits till the date of his death.

30. In the above backdrop, this Court is of the considered view that, the learned Labour Court has dealt with the issues agitated before it in detail and has based its reasoning on each of the issues, after having appraised the evidence placed on its record, the cross examination as well as the settled position of law.

31. Thus, in view of the above discussion of the factum and settled position of law, this Court is of the view that the learned CGIT has rightly arrived at the finding that the respondent workmen are entitled to be regularized at the post of 'Mali' as the petitioner entity has a policy in place for regularizing the services of the muster roll daily wage workers similar to the respondent workmen.

32. This Court is further of the view that the Hon'ble Supreme Court in a catena of judgments has time and again reiterated the settled position of law



that in matters wherein the management has formulated a policy for regularization of its employees, the Court must take note of the facts and circumstances of the case and direct the management to regularize the workmen as per the policy.

33. Bearing in mind the settled position of law with regard to the entitlement of regularization as per the policy of the management, coupled with the findings of the learned CGIT that the petitioner entity *vide* Office Order dated 29th March, 2006 bearing No. ADC(Hort)/AO (Hort)/DA/06/1302, had regularized the services of its daily wage workers engaged w.e.f. 1st April, 1998 to 31st March, 2000 and Ex.WW1/10 the Office Order dated 9th January, 2007 bearing No. ADC(Hort)/AO(Hort)/DA-IV/2007/79, by way of which the services of certain workmen were regularized w.e.f. 1st April, 2006, this Court is of the view that the learned CGIT has rightfully adjudicated the reference and the petitioner entity is bound to comply with its own policy and not to discriminate amongst the similarly placed workmen.

34. This Court is of the view that since the scope of interference with an award under Article 226 of the Constitution of India is limited, this Court cannot undertake an exercise of re-appreciating the evidence and drawing conclusions on pure questions of fact.

35. Since it is the settled position of law that the writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court, this Court is of the considered view that the instant petition is an appeal under the garb of a writ petition and the petitioner is seeking a re-



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examination and judicial review of the evidence adduced before the learned CGIT despite the factum that there are no such special circumstances that warrants interference of this Court.

36. It is perceptible from the findings of the learned CGIT that it had gone into depth of the material placed before it, therefore, this Court discerns no material to establish the proposition put forth by the petitioner entity. Therefore, it is held that there is no material to characterise the impugned Award as perverse and the learned Court below is well justified in passing the same.

37. In view of the foregoing discussions, this Court finds no infirmity in the impugned Award dated 13th February, 2017 passed by the learned Presiding officer, Central Government Industrial Tribunal (CGIT) Cum Labour Court, Karkardooma Courts, Delhi in I.D bearing No.166/201243 hence, the same is upheld.

38. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 28, 2024
gs/da/av

Click here to check corrigendum, if any