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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 535/2020 & CM APPL. 1413/2020, CM APPL. 6047/2020,
CM APPL. 28101/2023

NORTH DELHI MUNICIPAL CORPORATIONPetitioner

Through: Ms. Namrata Mukim, Standing
Counsel.

versus

SURENDER KUMARRespondent

Through: Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Ishaan Goel, and Mr. Siddharth
Sapra, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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11.03.2026

1. The present writ petition, filed under Articles 226 and 227 of the Constitution of *India*, is directed against the Award dated 31.08.2019 passed by the Labour Court in LIR No. 3110/2016 (Old ID No. 332/2014), whereby the claim application of the workman/respondent was allowed and the petitioner/management was directed to reinstate him with full back wages and continuity of service with all consequential benefits.
2. The workman had approached the Labour Commissioner and raised an industrial dispute, pursuant to which a reference was made to the Labour Court in the following terms:-

“Whether the termination of services of Sh. Surender Kumar S/o Sh. Ram Kumar, (Safai Karamchari) by the management is illegal and /or unjustified; and if so, to what relief is he entitled and what other directions are necessary in this respect?”



3. In the statement of claim filed before the Labour Court, the workman claimed that he had been working with the management on the post of “*Safai Karamchari*” since 1995 and that w.e.f. 06.02.2001, his services had been transferred to the Health Department, *Hindu Rao Hospital*.

4. On 02.02.2007, the workman statedly fell ill, and as a result thereof could not join his duties till 13.06.2008. Later, he furnished medical certificates, on which he was permitted to join back duties *vide* Office Order dated 14.01.2009. Thereafter, the management issued a statement of misconduct to the workman, to which he filed a reply, and eventually, *vide* order dated 17.11.2009 (communicated to the workman by Office Order dated 25.02.2010), the services of workman were terminated.

5. Ms. Mukim, learned counsel for the management/petitioner, contended that the Tribunal erred by not appreciating that the order of termination was not punitive in nature, as only a preliminary inquiry had been conducted. It was vehemently contended that since no disciplinary proceedings were initiated, the termination could not be held to be punitive. While referring to the order dated 25.02.2010, it was submitted that only the name of the workman had been struck off and that no finding of guilt had been recorded. In this regard, learned counsel further referred to the decisions of *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.*¹ and *Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences & Ors.*². Learned counsel also contended that the allegation of misconduct was only the ‘foundation’ and not the ‘motive’ to terminate the services of the workman.

¹ (1999) 3 SCC 60

² MANU/SC/0705/2001



6. Mr. Agarwal, learned counsel for the workman/respondent, on the other hand, defended the impugned Award and submitted that a plain reading of the order of termination dated 25.02.2010 would show that the same was passed in the context of the workman's absence from duty from 02.02.2007 to 12.06.2008. To explain his absence, the workman had furnished medical certificates to the management which were looked into, whereafter the workman was allowed to join back his duties without any condition, *vide* Office Order dated 14.01.2009. Learned counsel has further referred to the decision in MCD Vs. Praveen Kumar Jain & Ors.³ and has also relied on Dipti Prakash (*supra*) to submit that termination in the present case was not retrenchment but rather a measure taken in response to misconduct, making it punitive in nature, for which the management ought to have conducted disciplinary proceedings; in their absence, the termination order was rightly held to be illegal. Learned counsel further emphasised the limited scope of a writ petition and urged that the findings rendered by the Labour Court ought not to be interfered with.

7. I have heard the learned counsels for the parties and perused the material placed on record.

8. Indisputably, the workman was a daily wager on the muster roll and, while working as a *Safai Karamchari*, remained absent from 02.02.2007 to 12.06.2008. The workman had approached the management with his explanation along with medical certificates indicating that he was unwell. The management, on consideration of the explanation, allowed him to join duties *vide* Office Order dated 14.01.2009, which reads as under:-

³ (1998) 9 SCC 468



**“MUNCIPAL CORPORATION OF DELHI
HINDU RAO HOSPITAL, DELHI**

NO: AO/HRH/2009/366

DATED: 14.01.2009

OFFICE ORDER

With the approval of the Addl. Cm. (H) dated 05.01.2009 Sh. Surender Kumar S/o Sh. Ram Kumar, SK. Hindu Rao Hospital is hereby allowed to join his duty w.e.f 14.01.2009 (FN).

*Sd/-
Administrative Officer
Hindu Rao Hospital*

Copy to :-

- 1. Sh. Surender Kumar S/o Ram Kumar.*
- 2. AO (H)*
- 3. ACA/HRH.*
- 4. Office Copy.”*

9. A reading of the above would show that the workman was allowed to join duties unconditionally. It appears that later a statement of misconduct was issued, which reads as under:-

**“STATEMENT OF MISCONDUCT FRAMED AGAINST SH.
SURRENDER KUMAR S/O SH. RAM KUMAR, DAILY WAGER,
S.K. , MCD.**

That Sh. Surender Kumar while working as a Daily Wager, Safai Karamchari in Hindu Rao Hospital remained wilfully absent from his duty w.e.f. 02.02.2007 to 12.6.2008 without any information to the Competent Authority.

From the above it is clear that Sh. Surender Kumar S/o Ram Kumar Daily Wager, Safai Karamchari remained wilfully absent from his duty w.e.f. 2.2.2007 to 12.6.2008 without any information and permission from the Competent Authority which is a serious misconduct.

From the forgoing it is evident that Sh. Surrender Kumar, D/W S.K. has been unauthorizedly absent from his duty since 2.2.2007 to 12.6.2008 without information and prior permission of leave from the Competent Authority. He failed to maintain devotion to duty and committed gross misconduct.

His conduct is not found satisfactory and why his name may not be struck off from the Muster Roll of MCD.

Sd/-



COMMISSIONER
Municipal Corporation of Delhi

10. The workman replied to the above statement of misconduct, which led to the passing of the Office Order dated 25.02.2010 which reads as under:-

**“MUNCIPAL CORPORATION OF DELHI
HEALTH EEPTT. TOWN HALL DELHI**

No-AO (H)/KAJ/GF-91/2010/340

Dated: 25.02.2010

OFFICE ORDER

Sh. Surender Kumar S/o Sh. Ram Kumar, Daily Wager/Safai Karmachari, Working in Hindu Rao Hospital, was absent from duty w.e.f. 02.02.2007 to 12.06.2008 without prior intimation and permission of the Authorities.

He reported for duty on 13.06.2008 along with affidavit and medical certificate. As per order of the Addl. Comm. (Health) Sh. Surender Kumar was allowed to join his duty w.e.f. 14.01.2009 subject to initiation of departmental action for wilful absence from his duty.

The statement of misconduct was served upon Sh. Surender Kumar on 27.08.2009 and he submitted his reply on 06.10.2009.

After considering all facts and circumstances, the Competent Authority vide, its order dated 17.11.2009 has directed to struck off his same from the roll call of MCD with immediate effect.

This is issued and notified for information and necessary action to all concerned.

*Sd/-
Administrative Officer (Health)-II*

Copy to-

- 1. Sh. Surender Kumar S/o Ram Kumar, Daily Wager/Safai Karamchari Th-AO/Hindu Rao Hospital.*
- 2. MS/Hindu Rao Hospital*
- 3. ADC (H)*
- 4. ACA/Concerned*
- 5. OC/GF*

Copy for information:-

- 1. Addl. Commissioner (Health)*
- 2. DHA.*

*Sd/-
Administrative Officer (Health)-II*



11. Although learned counsel for the management/petitioner has contended that a daily wager would not be entitled to disciplinary proceedings, the said contention is meritless in light of the decision in Praveen Kumar Jain (*supra*), which pertains to a workman working as non-technical staff on the muster roll as a daily wager. In the said case, after holding a preliminary inquiry, the discharge order was passed on the allegation that the workman had committed misconduct by persuading his fellow workman to interpolate his name, along with that of one other employee, in the list of employees recommended for regularisation in service; thus, his services were held to be no longer required in the organisation. On a challenge being made, the Labour Court directed reinstatement of the workman. The Supreme Court, while dealing with the said facts, noted that the termination order was not passed after a departmental inquiry, but by way of simple discharge. The management, though initially taking the stand that it was not by way of penalty, later changed its stand and stated that the termination order was by way of penalty. The Supreme Court held that if the termination is by way of penalty, then a regular departmental inquiry is required to be conducted. The management ought to have appointed an inquiry officer, and the report ought to have resulted in an adverse finding against the workman, which would also need to be accepted by the disciplinary authority. The said procedure was, however, not undertaken in the said case. The Supreme Court further held that if the termination order was by way of penalty, the same would not survive in the absence of any departmental inquiry, and if it is a *simpliciter* discharge, the same is violative of Section 25F of the Industrial Disputes Act, 1947. With the said observations, the setting aside



of the termination order by the Labour Court was upheld.

12. Reference is also made to the decision of the Supreme Court in Jasmer Singh Vs. State of Haryana & Anr.⁴, which reinforces that even a daily wager, on completion of 240 days of continuous service, is entitled to the mandatory protections of Section 25F, 25G and 25H of the Industrial Disputes Act. The Court held that where termination is found to be *void ab initio* for non-compliance of the statutory provisions, the workman is ordinarily entitled to reinstatement with continuity of service and full back wages.

13. A gainful reference can also be made to the decision of the Division Bench of this Court in Delhi Cantonment Board Vs. CGIT & Ors.⁵, where the Court held that in service law there is a difference between a temporary employee and a permanent employee—while a permanent employee has a right to the post, a temporary employee does not—however, there is no such distinction in industrial law. The Industrial Disputes Act, 1947 makes no distinction between a permanent employee and a temporary employee (whether a probationer, casual worker, daily wager, or ad hoc employee). It was held as under:-

“7. A perusal of the above definition shows that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act.

...

9. Since the respondents were workmen under the Industrial Disputes Act, Section 25F of the Act had to be complied with if they had put in 240 days of service in the year prior to the date of termination of service. Respondents had admittedly put in over 240 days of service.

⁴ (2015) 4 SCC 458

⁵ 2006:DHC:18150-DB



Hence the termination of their service was illegal, since compliance of Section 25F is a condition precedent to the termination of service vide State of Bombay v. Hospital Mazdur Sabha, 1960 I LLJ 251 SC, National Iron & Steel Co.Ltd. v. State of West Bengal, 1967 II LLJ 23 SC, Mohanlal v. Management of Bharat Electronics Ltd. 1981 LIC 806 (815) SC, Avon Services (Production Agencies) Ltd. v. Industrial Tribunal 1979 I LLJ I SC. etc.”

14. In Dipti Prakash (*supra*), the Supreme Court, while canvassing the law on the subject, referred to its earlier decisions to distinguish a case of ‘foundation’ from ‘motive’ in the following manner:-

“20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [1980 (2) SCC 593]. As to ‘foundation’, it was said by Krishna Iyer, J. as follows: (SCC p. 617, para 53)

‘[A] termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non- injurious terminology is used.’

and as to motive: (SCC pp. 617-18, para 54)

‘54. On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.’

As to motive one other example is the case of State of Punjab v. Sukh Raj Bahadur [1968(3) SCR 234] where a charge memo for a regular inquiry was served, reply given and at that stage itself the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to A.G. Benjamin v. Union of India (Civil Appeal No. 1341 of 1966 dt. 13.12.1966) (SC) where a charge



memo was issued, explanation was received, an inquiry officer was also appointed but before the inquiry could be completed, the proceedings were dropped and a simple order of termination was passed, the reason for dropping the proceedings was that 'departmental proceedings will take a much longer time and we are not sure whether after going through all the foundation, we will be able to deal with the accused in the way he deserves'. The termination was upheld.

21. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

15. Mr. Agarwal has also contended that the order dated 25.02.2010 casts stigma on the conduct of the workman. In Dipti Prakash (*supra*), the Supreme Court observed that 'stigma' in an order of termination may have an effect on a person's future prospects of employment, and thus, it is a matter of relevant consideration as to whether an order of termination is a *simpliciter* termination or amounts to casting stigma. The same depends on the words used in the order of termination.

16. Before analysing the facts and the scope of the present writ petition, this Court notes that the workman presently stands reinstated with the management as a consequence of the workman's application under Section 17B of the Industrial Disputes Act being allowed.

17. Initially, on 14.01.2009, the workman was allowed to join back duties unconditionally. Later, a statement of misconduct was issued and post a reply to the same being filed, the Competent Authority, *vide* order dated



17.11.2009, directed that the name of the workman be struck off from the rolls of the management with immediate effect. A copy of the same has been placed on record a perusal of the same would show that the same is *sans* any application of mind. The workman was intimated about the termination order *vide* Office Order dated 25.02.2010, which records that the workman was allowed to join back duties subject to initiation of departmental action. As noted above, no departmental action was taken.

18. In his cross-examination, management witness *Sushil Chand Rustagi* stated that in the last 12 months preceding from March 2009 to February 2010, the workman had worked for 304 days. He also admitted that a daily wager muster roll employee is entitled to 52 Sundays as rest; thus, the workman had worked for 356 days in the 12 months preceding his termination in March 2009. The witness also admitted that, on account of consideration of the medical certificates for the illness period, the workman was allowed to resume his duties from January 2009. The correctness of the medical certificates was not disputed by the management. It was also stated that the workman was being considered for regularisation. It was also stated that the workman was not paid service compensation or given one month's notice or notice pay in lieu thereof. It was further admitted that there is no record available with the management of the workman being gainfully employed elsewhere after 25.02.2010. It was further admitted to be correct that the job of *Safai Karamchari* is of a perennial nature.

19. From the above, it can be gathered that the preliminary issue before the Labour Court was whether the termination order was *simpliciter* termination or amounted to a penalty. Once the management has itself claimed that the workman was allowed to join duties subject to initiation of



departmental action and concededly no departmental action was carried out, the termination order is liable to be set aside. At this stage, this Court also takes note of the limited scope of interference, as the Award of the Tribunal is not statutorily appealable. In this regard, this Court is guided by the decision of the Constitution Bench of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan & Ors.⁶, wherein it was observed that the jurisdiction of a writ Court, being supervisory, is not equitable to that of an Appellate Court. Such jurisdiction is to be exercised only if the impugned order is passed without jurisdiction or as a result of failure to exercise jurisdiction. The order can further also be faulted for not following the principles of natural justice or if it is shown to be perverse. The relevant extract of the said decision is reproduced hereinunder:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible

⁶ (1964) 5 SCR 64



and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of (1) [1955] 1 S.C.R. 1104. (2) [1958] S.C.R. 1240. (3) A.I.R. 1960 S.C. 1168. the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal



provision which is alleged to have been misconstrued or contravened.”

20. Even the Coordinate Bench of this Court in MCD Vs. Aasha Ram & Anr.⁷ noted the scope of limited interference to be exercised by the writ Court. Thus, this Court is of the considered view that, upon re-appreciation, the order of termination is bad on both counts: if the order is a *simpliciter* termination, then it was passed in violation of Section 25F of the Act; and if it is in the nature of a penalty, the same was passed without any departmental proceedings. Accordingly, the challenge to the impugned Award fails, and the said Award is upheld. The amount lying deposited with the Registry of this Court be released to the workman/respondent.

21. The present petition is disposed of along with pending applications.

MANOJ KUMAR OHRI, J

MARCH 11, 2026

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⁷ 2005 (80) DRJ 750