

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.3349/2013

New Delhi, this the 20th day of August, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

1. Dinesh
R/o Village Saba Pur Gujran,
Delhi-110 094.
2. Jagat Singh
R/o Village Kherli Hafeez Pur,
Mandi Shyam Nagar, Dist. Gautam,
Budh Nagar, U.P.
3. Sanjay Suman
R/o 160, Main Raid Kardampuri,
Shahdara, Delhi-94.
4. Satbir Singh
R/o Village Paloda PO Mohdin Pur,
Ghaziabad, U.P
5. Dharam Pal
R/o Village Nangla Badi, PO Nangla
Badi, Baghpat, U.P.
6. Om Prakash
R/o C-329, Chajju Pur Shahdara,
Delhi-110 032.
7. Som Vir
R/o Village Palla, PO : Dadri,
Dist. Gautam Budh Nagar, U.P.
8. Manvir Singh
R/o B-375, Kabir Nagar, Shahdara,
Delhi.
9. Iqbal Singh
D-24, West Jyoti Nagar, Shahdara,
Delhi.
10. Surender Kumar Sharma
R/o A-334, Shiv Mandir Marg,
Village Chhajju Pur, Shahdara,
Delhi-110 032.

.. Applicant

(Argued by: Shri Anuj Aggarwal, Advocate)

Versus

East Delhi Municipal Corporation,
419, Patparganj Industrial Area,
Delhi-110 092.

Through Commissioner

..Respondent

(By Advocate: Mr. R. K. Jain)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), filed by applicants Dinesh and Others, exposted from the record, is that, initially they were engaged as daily rated/muster roll Beldars between the year 1984 to 1989 in the Horticulture Department of Municipal Corporation of Delhi (for short "MCD"). Their services were abruptly terminated by MCD.

2. In pursuance of Industrial Dispute raised by the applicants against the MCD under the provisions of Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act"), their termination orders were set aside. They were reinstated with continuity of service with full back wages, vide Award dated 13.02.2003 (Annexure A-2) by the Presiding Officer of the Labour Court.

3. Not only that the Award was implemented vide Office Order No.DOH/ADC(Hort.)/AO (Hort.)/DA-VII/05/860 dated 03.10.2005 (Annexure A-3). Subsequently, vide another

Corrigendum/Order No.DOH-I/ADC(Hort.)/AO(Hort.)/DA-VII/2005/888 dated 21.10.2005 (Annexure A-4), it was clarified that the applicants are entitled to reinstatement with full back wages and continuity in service by the MCD.

4. Thereafter, the services of the applicants were regularized by means of Office Order No.ADC(Hort.)/AO(Hort.)/DA-III/2006/375 dated 28.08.2006 (Annexure A-5) by the MCD.

5. Surprisingly enough, the MCD has suddenly directed the recovery of excess amount from their salary for which they were not allegedly entitled for the relevant period they were out of service vide impugned order dated 13.07.2011 (Annexure A-1). This order was passed without issuing any Show Cause Notice (SCN) or providing any opportunity of being heard to the applicants. Even the impugned order was not withdrawn by the MCD, despite issuance of legal notice dated 13.10.2011 (Annexure A-6) on behalf of the applicants.

6. Aggrieved thereby, the applicants have preferred the instant OA challenging the impugned order dated 13.07.2011 (Annexure A-1), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

“(A) Because the respondent failed to consider that the applicants were kept away from the work by an act of the respondent, declared illegal and unjustified by the Labour Court and they were ordered to be reinstated with full back wages and continuity of service, which was accepted and implemented by the respondent and, therefore, amount already paid to them in compliance of the Award of the Labour Court could not be recovered.

(B) Because the respondent failed to appreciate that as held by the Hon'ble Delhi High Court in the matter of ***On Dot Couriers and Cargo Ltd. Vs. Anand Singh Rawat 165(2009) DTL 89*** wherein the termination is held to be illegal, the order removing the workman from service would be rendered as ineffective order. As a consequence the workman would be deemed to be continued in service with all consequential benefits and therefore no recovery could be affected from the applicants.

(C) Because the proposed action of the respondent is illegal and unconstitutional.

(D) Because the respondent failed to take into account that the award of Labour Court declared the action of the respondent, terminating the services of the applicants as illegal (void ab initio) and therefore by seeking to recover the amount paid to the applicants, the respondent cannot take advantage of its own wrong.

(E) Because recovery of this amount amounts to punishment, which cannot be imposed upon the applicants in violation of the principles of natural justice”.

7. According to the applicants, the impugned order is arbitrary, illegal and without jurisdiction. On the strength of the aforesaid grounds, the applicants sought quashing of the impugned order, in the manner indicated hereinabove.

8. The contesting respondents refuted the claim of the applicants and filed their reply, wherein it was pleaded as under:-

“The applicants admitted were (sic) engaged initially as daily wager/muster (sic) roll beldar and entitled only to get the daily wage salary and are (sic) not entitled to get the salary of the regularized employee. Moreover, the above workmen were (sic) notionally regularized w.e.f. 01.04.1990 for the purpose of their continuity of service. However, they are not entitled to get the wages against the regular employees more particularly from the period of April, 1990 to October, 2005 as they have not served the institution. Hence, the above corrigendum is just and lawful as the applicants have got the excess salary in the shadow of the orders dated 28.08.2006”.

9. The case of the respondent further proceeds, that the applicants were only entitled to back wages and continuity

of service and were not entitled to the salary of regular employees. Thus, the excess payment of their salary was rightly ordered to be recovered, vide impugned order (Annexure A-1) by the MCD.

10. Virtually acknowledging the factual matrix and reiterating the validity of the impugned order (Annexure A-1), the respondent has stoutly denied all the allegations and grounds contained in the OA and prayed for its dismissal.

11. Controverting the allegations contained in the reply of the respondent and reiterating the grounds taken in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

12. Having heard the learned counsel for the parties, having gone through the records with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be accepted, for the reasons mentioned hereinbelow.

13. Ex-facie the argument of learned counsel that the applicants were duly reinstated with continuity of service & with full back wages and since the order of the Labour Court has already attained the finality & implemented by the MCD vide (Annexure A-3) and (Annexure A-4), so they will be deemed to be in service and the impugned order of recovery is liable to be set aside, has considerable force.

14. On the contrary, the contention of the learned counsel that the applicants were not entitled to the amount sought to be recovered, so the MCD has every right to effect the recovery of excess amount, is neither tenable nor the observation of Hon'ble High Court of Allahabad in case of ***State of U.P. and Others Vs. Prashid Prasad and Others 2014 LawSuit(All) 1818*** wherein it was observed that there is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded.

15. Possibly, no one can dispute with regard to the aforesaid observation of the Allahabad High Court, but the same would not come to the rescue of the respondent because in the instant case, the Labour Court has already reinstated the applicants with continuity of service and with full back wages vide Award dated 13.02.2003 (Annexure A-2) between the parties.

16. As is evident from the record that the services of the applicants were abruptly terminated by MCD. In the wake of Industrial Dispute, their terminations were set aside. They were reinstated with continuity of service and full back wages, by virtue of an Award dated 13.02.2003 (Annexure A-2) by the Labour Court. It is not a matter of dispute that the Award of Labour Court has already attained the finality and

fully implemented. Even the amount of back wages has already been paid to the applicants by the respondent, by means of orders dated 03.10.2005 (AnnexureA-3) and dated 21.10.2005 (AnnexureA-4). In that eventuality, the applicants would be deemed to be in service retrospectively for all intents and purposes in view of the ratio of the law laid down by Hon'ble Delhi High Court in Anand Singh Rawat's case (supra). They are entitled to their salary on the indicated post. Therefore, neither the MCD can be now heard to so say nor it can possibly be saith that the applicants are not entitled to the full salary. Hence, MCD has got no jurisdiction to effect the recovery of the impugned amount. Moreover, the applicants cannot be condemned unheard in this regard. Hence the impugned order (AnnexureA-1) is arbitrary, illegal, against the principles of natural justice & cannot legally be sustained and deserves to be set aside.

17. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The MCD intended to recover the amount of salary of the applicants in a very arbitrary manner, that too, without issuing any Show Cause Notice or providing any opportunity of being heard.

18. Meaning thereby, the respondent has violated with impunity, the principles of natural justice and slipped into deep legal error, while passing the impugned recovery order on wholly unsustainable grounds, without any fault on the part of the applicants. The Hon'ble Supreme Court in case of

State of Punjab and Others etc. Vs. Rafiq Mashi (White Washer) etc. 2014 (14) SCALE 300 has considered an identical matter of recovery of excess amount of pay paid to the employee during the course of his employment and it was concluded as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover”.

19. Therefore, otherwise also, the case of the applicants squarely falls within the ambit of clauses (i) & (iii) of para 12 of ***Rafiq Mashi's case*** (supra).

20. Thus seen from any angle, we are of the considered opinion that impugned order (Annexure A-1) cannot legally be sustained in the obtaining circumstances of the case.

21. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

22. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order dated 13.07.2011 (Annexure A-1) is hereby set aside.

Needless to mention, in case any amount from the salary of any of the applicants is recovered, then MCD is directed to adjust/refund the indicated amount to them. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
20.08.2016