IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.3459/2003

Judgment reserved on: 1.05.2009
Judgment delivered on:19.05.2009

The Municipal Corporation of Delhi .....Appellant

Through Mr.O.P.Saxena, Adv

Versus

Smt.Krishna ..... Respondents

Through: Mr.Anuj Aggarwal, Adv

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J

1 . The present petition has been filed under Articles 226 & 227 of the Constitution of India for issuance of

appropriate writ quashing the order dated 4.12.2000 of the Industrial Tribunal.

2 . The brief facts of the case as set up before the tribunal by the workman are as under:-

The respondent workman joined MCD on 1.11.1979 as Safaikaramchari & has been working on the said post with due diligence but while her counterparts doing identical work were paid salary in the pay scale of Rs.750-940 with usual allowances along with other benefits while she was denied the same. The non-regularization of services of workman w.e.f. 1.11.1979 is the pay scale of Rs.196-232/- as revised to the scale of Rs.750/--940 w.e.f. 1.1.1996 was alleged to be illegal and unjustified. Upon reference, the Ld. Labour Court passed the award in favour of the workman. Aggrieved with the said award, present petition has been preferred by the management MCD.

3. Counsel for the petitioner submitted that respondent was appointed as a part time Sweeper and not as a full time employee. Counsel also submitted that respondent was given duty in a Government Dispensary where she used to work only for two hours and she was appointed in terms of the MCD

policy dated 29.4.1994. The contention of the counsel for the petitioner is that such workmen were being employed as part time workers only on monthly salary of some small amounts. The revision in the monthly salary of part time workers was made in fact much prior to the said office order. Counsel thus submitted that once the respondent was employed as a part time worker on the post of sweeper, her status cannot be treated at par with a full time employee and therefore, the findings of the Labour Court are illegal and perverse treating such an employee as full time worker. Counsel for the petitioner placed reliance on the judgment of the Apex Court as **State of Karnataka Vs. Uma Devi (2006) 4 SCC 1** in support of his arguments.

1. **(1997) 11 SCC 224 Secretary Ministry of Communications and others Vs. Sakkubai and Another**
2. **(1996) 11 SCC 341 Union of India Vs. Bishamber Dutt**
3. **(2003) 9 SCC 304 Phool Badan Tiwari and Others Vs. union of India and others.**
4. **1992 SCC (L&S) 345 State of Punjab and Others Vs. Surinder Kumar and Others.**

4. Refuting the said submissions of the counsel for the petitioner, counsel for the respondent submitted that the

respondent was employed as a full time sweeper in the year 1979 for the past more than 30 years initially on a fixed monthly salary of Rs.30/- and she had been working as a full time employee from 8.00 a.m. to 2.00 p.m. Counsel further submitted that respondent had been working on the said post, continuously, now for more than 30 years without any interruption and once the petitioner had been taking services of the respondent at par with the other regular employees, therefore, she was entitled for regularization at par with the other regular employees. Counsel further submitted that tribunal has taken into consideration all the facts proved on record and then came to the conclusion that the respondent was a full time employee working from 8.00 a.m. to 2.00 p.m. and the said finding of fact may not be interfered with by this court, more particularly, when no evidence has been adduced by the petitioner to rebut the case set up by the respondent. Counsel for the respondent placed reliance on the following judgments in support of his arguments.

1. **AIR 1986 SC 302 SCC Harbans Lal Vs. Jagmohan Saran**
2. **JT 2007 (12) SC 179 U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others**

3. (1999) V AD (Delhi) 905-MCD VS Gauri Shanker & Ors
4. WPC No.17932/2004- MCD Vs. Brij Mohan decided on 20.10.2005 by Delhi High Court
5. SBI Vs. Workman of SBI – AIR 1990 SC 2034.
6. State of Haryana Vs. Om Prakash – (1998) 8 SCC 733

5. I have heard Ld. Counsel for the parties and perused the record.

6. The petitioner management did not produce any cogent evidence to prove that the respondent was a part-time worker. It has been observed by the tribunal in para 6 of the award that the management did not lead any evidence and vide order dated 21.5.2001, management evidence was closed. The management neither produced any record, register or document to prove the factum of respondent being a part time or a full time worker nor did it cross examine the respondent on this point. Infact it was failure on the part of the petitioner in not placing any material on record to substantiate its plea of respondent being a part time worker. The tribunal made an award against the management and in favour of the workman. The petitioner has not come to this court with clean hands and did not disclose that it was due to its inability callousness and

lackadaisical approach to bring relevant documents on record or any other cogent and reliable evidence on record that the tribunal decided the matter in favour of the respondent. It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to present those facts before the writ court which were not put forward before the Courts below. The foundational facts are required to be pleaded enabling the Court to scrutinise the nature and content of the right alleged to have been violated by the authority. In this regard, the Hon'ble Apex court in **Prestige Lights Ltd. v. SBI,(2007) 8 SCC 449,** observed as under:

> 33**.** It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

7. Be that as it may, It is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. In this regard in **Harbans Lal v. Jagmohan Saran, (1985) 4 SCC 333,** the Hon'ble Apex Court observed as under:

> **5.** We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence. The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business. The finding by both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. **The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of judisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court.** When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the

> Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

8. Further in **Calcutta Port Shramik Union v. Calcutta River Transport Assn., 1988 Supp SCC 768**, the Hon'ble Apex Court observed as under:

> **10.** The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. **In all such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds.** Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

9. In view of the above discussion and considering that the petitioner itself was not diligent in pursuing the matter before the tribunal as it did not bring forth the relevant evidence to prove that the respondent was not a full time employee of the petitioner, I feel that the tribunal committed no error in this regard. Therefore, no interference in this regard is made by this court.

10. The judgments relied upon by the petitioner are of no assistance to it.

11 . The petition is devoid of any merit and is accordingly dismissed.

May 19, 2009 **KAILASH GAMBHIR, J.**
pkv