

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

Date of decision: 22nd February, 2011

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W.P.(C) No.3735/1997

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through: Mr. Mukesh Gupta & Mr. Sumit
Gupta, Advocates

Versus

SH. RAMKISHAN & ANR.

..... Respondents

Through: Mr. Anuj Aggarwal, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 24th September, 1996 of the

Labour Court deciding the reference:

“Whether the services of Shri Ram Kishan have been terminated illegally and / or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

in favour of the respondent No.1 workman and directing the petitioner MCD to reinstate the respondent No.1 workman with full back wages and continuity of service. Notice of the petition was issued and vide *ex parte* order dated 11th September, 1997, which has continued to be in force, the operation of the award stayed. Litigation expenses of ₹5,000/- were directed to be paid to the respondent No.1 workman. The respondent No.1 workman filed an application under Section 17B of the Industrial Disputes Act, 1947 which was allowed vide orders dated 22nd January, 2001 and 9th February, 2001. The petitioner MCD thereafter filed CM No.13268/2002 stating that since it had been directed to pay last drawn wages to the respondent No.1 workman, it would like to reinstate the respondent No.1 workman on duty without prejudice to its rights and contention and subject to the outcome of the writ petition. The respondent No.1 workman also showed willingness to so join the duty. The said application was accordingly allowed on 27th February, 2003 and the respondent No.1 workman was directed to report for duty on 3rd March, 2003. The respondent No.1 workman filed CM No.11942/2004 pleading

that despite his approaching the petitioner MCD on several occasions, he was not being assigned work. Vide order dated 18th August, 2005, the respondent No.1 workman was directed to report to the Sanitation Superintendent of the petitioner MCD on the same day and the respondent MCD directed to assign duty to the respondent No.1 workman every day. The counsels have today informed that the respondent No.1 workman since then has been working for the petitioner MCD and is being assigned work. CM No.4639/2007 has been filed by the respondent No.1 workman seeking direction to the petitioner MCD for release of arrears against the order under Section 17B of the ID Act. The counsel for the petitioner MCD states that the arrears have been so released. The counsels have been heard on the merits of the writ petition.

2. It was the claim of the respondent No.1 workman before the Labour Court that he had been in the employment of the petitioner MCD since 15th October, 1982 as a Safai Karamchari; that he was being treated as a daily rated / casual / muster roll worker and was being paid the minimum wages as casual unskilled workers; that he continued to so work till 17th March,

1988 when his services were terminated without assigning any reason but for the reason of his having made a complaint to the Anti-Corruption Branch against a Sanitary Inspector and who on such complaint was caught red-handed while accepting the bribe. Pleading that he had been victimized and in any case the termination of his services were violative of Sections 25F, G&H of the ID Act, the claim for reinstatement with full back wages in proper pay-scale and allowances was made.

3. The award records that the petitioner MCD contested the claim aforesaid *inter alia* on the ground that the respondent No.1 workman was engaged as a substitute daily wager Safai Karamchari and was paid minimum wages for the days he actually worked; he was engaged whenever there was any vacancy due to leave of any regular Safai Karamchari; he was never engaged against a vacant post of Safai Karamchari; that the work of a substitute daily wager Safai Karamchari is not identical to that of a regular Safai Karamchari; that the petitioner had stopped reporting for work after 5th May, 1983.

4. The Labour court on the pleadings of the parties framed the following issues:

- “1. Whether the workman himself stopped coming to the work after 5th May, 1988 as alleged? If so, its effect.
2. As in terms of reference.”

5. The award records that the onus to prove issue No.1 aforesaid was on the petitioner MCD and it had failed to discharge the onus; that though in the cross examination of the respondent No.1 workman suggestion was given that he had abandoned his job but neither date of abandonment was put nor the same was substantiated by way of positive evidence; that there was no suggestion to the respondent No.1 workman that he was ever asked to resume duty after the abandonment. It is further recorded that on the contrary the respondent No.1 workman had proved service of the demand notice dated 28th March, 1988 on the petitioner MCD and the certificate issued by the petitioner MCD showing that the respondent No.1 workman was working with it on daily wages and that he was a witness in the case of Hari Kishan, Sanitary Inspector and the office notings of the proposal to

transfer the respondent No.1 workman. The Labour Court accordingly held the termination to be without compliance of provisions of Section 25F of the ID Act and finding that the respondent No.1 workman had established that he had worked for more than 240 days in a year, granted the relief aforesaid. However, the relief of fixation of pay-scale was declined as being beyond the scope of reference.

6. The petitioner MCD in the writ petition has reiterated its case aforesaid before the Labour Court. However, there is no explanation whatsoever as to why no evidence was led by the petitioner MCD before the Labour Court. The petitioner MCD before this Court also has not placed any documents whatsoever to demonstrate before this Court that the respondent No.1 workman was not in daily employment for 240 days in a year. There is thus nothing before this Court to believe the version of the petitioner MCD and which the petitioner MCD has failed to establish before the Labour Court. No case for judicial review is thus made out.

7. I am even otherwise of the view that the respondent No.1 workman having worked with the petitioner MCD for the last over five years, it would not be equitable to disturb the respondent No.1 workman. I have enquired the age of the respondent No.1 workman. I am informed that he would be about 50 years of age.

8. I have however put to the counsel for the respondent No.1 workman as to whether in the face of the defence aforesaid of the petitioner MCD before the Labour Court, the respondent No.1 workman was not required to establish its case by calling for the records of the petitioner MCD; the matter of the alleged employment of the respondent No.1 workman with the MCD was not such with respect to which no records or documentary proof would have existed; even if there was no proof with the respondent No.1 workman, the respondent No.1 workman to establish his case could have summoned the record of the petitioner MCD. It has therefore been suggested to the respondent No.1 workman that while allowing the respondent No.1 workman to continue in the employment of the petitioner MCD, the respondent No.1 workman is not found entitled to the award for

full back wages or for anything more than minimum wages till the date he joined duty with the petitioner MCD i.e. till 18th August, 2005. The counsel for the respondent No.1 workman has fairly stated that subject to the respondent No.1 workman being granted seniority in employment since 1982, he would not insist upon payment of the amounts due to him.

9. I have considered the aforesaid proposal of the respondent No.1 workman. I am unable to grant the seniority in employment with effect from 1982 to the respondent No.1 workman. The case of the respondent No.1 workman himself was that he was a daily rated wager. His reinstatement with the petitioner MCD, in terms of the award, would have been as a daily rated wager only. He cannot thus be held to be entitled to seniority with effect from 1982 and can at best be held to be entitled to seniority with effect from the date of the award i.e. 24th September, 1996.

10. I have in ***DTC Vs. Phool Singh*** 2010 (4) AD (Delhi) 223 & in judgment dated 29th April, 2010 in W.P.(C) No.6647/2003 titled ***DTC Vs. Presiding Officer*** held that when an employee is made to join duty and put

to work, even if in lieu of 17B wages, he is entitled to full wages as are being paid to others performing the same duties and not merely to 17B wages. Though the petitioner has not been held entitled to anything more than 17B wages till the date of joining duty with the MCD but I see no reason to deny the petitioner full wages as per his entitlement i.e. as per his seniority from the date of the award, at least with effect from 18th August, 2005 since when the respondent No.1 workman has joined duty with the petitioner MCD.

11. The writ petition is accordingly disposed of as under:

- (i) The challenge to the award in so far as directing reinstatement of the respondent No.1 workman is dismissed.
- (ii) The challenge to the award in so far as for back wages, is allowed and the respondent No.1 workman is not found entitled to any back wages till the date of the award.
- (iii) Similarly, it is directed that the respondent No.1 workman from the date of the award and till 18th August, 2005 is entitled only to the 17B wages.

- (iv) The respondent No.1 workman with effect from 19th August, 2005 is found entitled to full wages as being paid to others having the same seniority as of the workman counted from the date of the award. The arrears on said account be paid to the respondent No.1 workman within eight weeks of today failing which the same shall incur interest at the rate of 10% per annum, besides other remedies of respondent No.1 workman.
- (v) It is clarified that the seniority of the respondent No.1 workman while continuing in the employment of the petitioner MCD shall be computed from the date of the award.

Litigation expenses having already been paid, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 22, 2011
'gsr'