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

+ **LPA No.935 OF 2011**
LPA No.936 OF 2011
LPA No.937 OF 2011
LPA No.938 OF 2011

Judgment Reserved on: 10.5.2012
% *Judgment pronounced on: 13.7.2012*

LPA No.935 OF 2011

MCD **. . . APPELLANT**
Through: Ms. Mini Pushkarna, Advocate.

VERSUS

PUSHPA RANI **...RESPONDENT**

Through: Mr. Anuj Aggarwal, Advocate.

LPA No.936 OF 2011

MCD **. . . APPELLANT**
Through: Ms. Mini Pushkarna, Advocate.

VERSUS

SANJAY KUMAR **...RESPONDENT**

Through: Mr. Anuj Aggarwal, Advocate.

LPA No.937 OF 2011

MCD **. . . APPELLANT**
Through: Ms. Mini Pushkarna, Advocate.

VERSUS

SANJEEV KUMAR **...RESPONDENT**

Through: Mr. Anuj Aggarwal, Advocate.

LPA No.938 OF 2011

MCD . . . APPELLANT
Through: Ms. Mini Pushkarna, Advocate.

VERSUS

RAMESH KUMAR ...RESPONDENT

Through: Mr. Anuj Aggarwal, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The respondents in all these appeals were working on casual basis in different capacities with MCD. They were all engaged on daily wages. After some time, services of the two respondents were regularized as well. They worked for few years in this capacity. However, thereafter, their services were terminated on different dates sometime in January, 2007 and February, 2007. The main reason for termination of their services, as per the MCD was that they had entered the services on the basis of forged appointment letters and were never recruited after any selection process or by any competent authority even on casual basis. We may mention at this stage that there were large scale of appointments with the MCD with

forged/bogus appointments letters and this racket was unearthed. In fact, as would be noted in detail hereinafter, a Public Interest Litigation was also filed in this Court wherein the Court had given directions to the MCD to investigate into the matter and take departmental as well as criminal action not only qua those officers who are responsible for such a scam but also dismiss the services of those persons who were found to have entered on the basis of fabricated appointment letters. The MCD did this exercise and found that many such persons secured employment fraudulently on the basis forged/fabricated documents. There services were also dispensed with. These included the respondents herein as it was alleged that these persons also submitted forged appointment letter and other documents to enter the service. They raised industrial dispute under Section 10 (4A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act'). Initially one single statement of claim was filed by all the four persons. The MCD questioned the maintainability of such a dispute as according to the MCD, only individual dispute could be raised as per the provisions of Section 10 (4A) of the ID Act. The same was accordingly dismissed by the Labour Court and four individual cases were filed. By the time, fresh applications under Section 10 (4A) of the ID Act was filed, the period of one year from the date of their termination had passed by. The MCD, in these circumstances, took the objection that the claims were time barred as

they were filed beyond limitation period of one year. It was also submitted on merits that they have secured appointment on the basis of fake letters and, therefore, not entitled to any relief. The Labour Court passed the awards in all the four cases holding that the claim was barred by time and, therefore, the workmen were not entitled to any relief. Challenging that order, these workmen preferred separate writ petitions (four in number). The learned Single Judge has allowed these writ petitions vide common judgment dated 27.7.2011, holding that the claims were not time barred and further that since the MCD did not lead any evidence showing that these workmen had produced fabricated appointment letters and, there services were terminated without giving any show cause notice and affording any opportunity to them to defend their cases and their termination was bad in law. The learned Single Judge has, accordingly, allowed the writ petitions, setting aside the order of the Labour Court and directing reinstatement of these workmen without back wages. At the same time, the opportunity is granted to the MCD to proceed against these workman in accordance with law after issuing them show cause notice and giving them chance to be heard. Challenging this order of the learned Single Judge, present Intra-court appeal is preferred by the MCD, under Clause 10 of the Letters Patents.

2. Before we proceed to consider the twin aspects which arose in these appeals namely question of limitation in preferring the claim, under Section 10 (4A) of the ID Act and validity of termination, we would state the facts of each case, in brief, as noted by the learned Single Judge as well.

3. Smt. Pushpa Rani, respondent in LPA 935/2011 was appointed as a Nursery Aaya in the MCD on daily wage basis with effect from 1st July, 1998. On similar grounds her services were terminated on 5th August, 2000. She was re-engaged on 6th February, 2002 and her services were again terminated with effect from 3rd February, 2007.

4. Shri Ramesh Kumar, respondent in LPA 938/2011 was appointed as a School Attendant in the Municipal Corporation of Delhi with effect from 1st May, 1998 on daily wage basis. His services were regularized with effect from 1st April, 2005 although it is the case of the petitioner that he was entitled for regularization from the date of his initial appointment. It is stated that his services were illegally terminated with effect from 25th January, 2007 on the basis of allegations that he had obtained employment fraudulently on the basis of forged and fabricated documents.

5. Mr. Sanjay Kumar, the respondent in LPA 936/2011 was appointed as a chowkidar in the MCD with effect from 11th January, 1999. His services were regularized with effect from 14th February, 2002. On the same ground his services were terminated on 31st January, 2007.

6. Mr. Sanjeev Kumar, respondent in LPA 937/2011 was appointed as a school attendant in the MCD with effect from 29th May, 1998. On similar grounds, his services were terminated on 5th August, 2000. He was re-engaged on 5th February, 2002 and his services were again terminated with effect from 2nd February, 2007.

Re: Limitation

7. The services of the four workmen were terminated w.e.f. 25.1.2007, 31.1.2007, 3.2.2007 and 2.2.2007. They filed single statement of claim under Section 10(4A) of the ID Act on 1.8.2007. This was dismissed as not maintainable vide order dated 22.10.2008 holding that under this provision only an individual workman can raise an industrial dispute. Thereafter, they filed individual claim on 8.12.2008 in which the Labour Court rendered the award holding the claim to be time barred. It is clear from the above that the Labour Court has taken the date of termination and filing of the individual IDs. Definitely, these are filed beyond the period

of one year. However submission of the respondent workman was that they had approached the Labour Court within one year by filing joint claim under Section 10 (4A) of the ID Act and only mistake was that joint claim was not maintainable. Therefore, when the second claim was filed , the period when the joint claim was pending should be excluded for reckoning the limitation which is accepted by the learned Single Judge. We are of the view that the approach of the learned Single Judge is perfectly right.

8. Section 14 of the Limitation Act stipulates as under:

> "14. Exclusion of time of proceeding bonafide in court without jurisdiction.
> (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
> (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
> (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub- section (1) shall apply in relation to a fresh suit instituted

> on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.- For the purposes of this section,-
> (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
> (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
> (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

9. No doubt, Limitation Act has no application to the proceedings under the ID Act, however, the provision is based on public policy and the principle laid down therein is to ensure that a person who was pursuing a wrong remedy but in a bona fide manner should not be made to suffer on that account. Therefore, when we have to examine the issue the limitation of one year as prescribed under Section 10 (4A) of the ID Act, we are of the opinion that the aforesaid principle enshrined in the aforesaid provision should be made applicable otherwise it would lead not only to an absurd result but manifest injustice to the bona fide litigants. We thus hold that the claim of the respondent was within time.

Re: On Merits:

10. The question as to whether the respondents/workmen had joined the services on the basis of forged document was a disputed question of fact. We may record that some of the workmen, after termination of their service had file the writ petitions. These writ petitions were dismissed on this very ground namely whether they had joined the services on the basis of forged documents or not was a disputed question of fact. No doubt, inquiry regarding appointment on daily wages was conducted by the Committee constituted by the MCD. It is also a matter of record that there were 100 employees who had joined the services on the basis of forged documents, however, these fact finding inquiries were conducted without involving the respondents/workmen. In the mean time some of these workmen had even been regularized. In these circumstances, the minimum requirement of principle of natural justice was to issue them show cause notice and give them hearing before taking action. Even if that was not done when these respondents/workmen raised industrial dispute, it became incumbent upon the MCD to lead evidence before the Labour Court producing all those documents on the basis of which the MCD was alleging that the respondents had secured the appointment on the basis of forged documents. However, we are astonished to find that no evidence was led by the MCD before the Labour Court. The workmen had

examined themselves and had even produced certain documents which were exhibited. Thereafter, MCD was given opportunity to lead evidence. For reasons unknown to this Court, which baffles us, the authorized representative of the MCD made a statement that he did not want to lead evidence on behalf of the MCD. Plethora of document are now produced with an attempt to make out a case of forged documents. What precluded the MCD to lead evidence of this nature before the Labour Court, is not understood. When these documents were not placed record before the Labour Court and no evidence was led, it is impermissible to look into these documents in the writ petition or in the present LPAs.

11. We further find that the Labour Court has returned the findings against the workmen on the ground that it was an "admitted fact" and need no further deliberations. The entire discussion on this aspect is as follows:-

> "**Whether the workman has joined the services of the management on 01.7.1998 and in which department?**
> Keeping in view the documentary evidence my inference is that the issue be decided against the workman on following grounds:-
> (i) It is stated by the workman in the statement of claim as well as in the evidence by way of affidavit that he joined the management on 01.7.98. This fact is admitted by the management that the workman joined the management on 01.07.98.

> However, he joined on the basis of forged and fabricated documents. So far as the fact is concerned, it is admitted fact and needs no further deliberations. Hence the workman joined the services on 01.07.98 with the averments of management that on the basis of forge and fabricated documents.

12. There is nothing to state as to whether the workman had admitted this fact. This was the statement of the management MCD and MCD as noticed above, has not led any evidence. It would become an admitted fact only if the workman had also accepted the same. However, that is not the correct position on record.

13. We have gone through the statement of claims filed by these workmen. Apart from stating that their services were terminated illegally and unjustified, without any notice or payment of compensation and in violation of Section 25-GF, G and H of the ID Act, it was specifically pleaded that they were innocent and did not commit any misconduct and in any case no memo or chargesheet was served upon them or disciplinary inquiry conducted against them. In the reply, the management has taken the plea of securing the appointment with forged appointment letter and in the rejoinder the workmen specifically denied that they had joined the service with forged appointment letters. In these circumstances, it was not an admitted fact as wrongly mentioned by the Labour Court and the MCD

should have led the evidence and not leading the evidence is a serious lapse on the part of the MCD, it has to suffer the consequences. Still, the learned Single judge has passed a very equitable order inasmuch as while directing the reinstatement, the liberty is granted to the MCD to take action in accordance with law, even the reinstatement is without back wages.

14. We thus do not find any merit in these appeals and dismiss the same with cost quantified @ 5000/- in each of these appeals.

ACTING CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
JUDGE

JULY 13, 2012
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