

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

% W.P.(C) 6865/2010

+ Date of Decision: 14th May, 2012

PAWAN KUMARPetitioner
! Through: Mr. Anuj Aggarwal, Advocate

Versus

\$ THE ASSTT. LABOUR COMMISSIONER
GOVT. OF NCT OF DELHI & ANR.Respondents
Through: Ms. Chetali Jain for Mr. V.K.
Tandon, Advocate for R-1.
Ms. Saroj Bidawat, Advocate
for R-2.

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

1. Rule.
2. With the consent of the counsel for the parties this writ petition has been taken up for final hearing today itself as pleadings are complete and only a short point is involved.
3. I have heard learned counsel for the parties.
4. The only grievance made by the petitioner in this writ petition is that despite the fact that vide award dated 2nd

February, 2006 the Industrial Tribunal had directed the respondent no.2-Municipal Corporation of Delhi to consider his case for regularization considering him to be in its service from 29th March, 1990, neither he has been regularized nor any decision communicated to him in that regard. Not only that even the Labour Commissioner who has been entrusted the responsibility of ensuring the implementation of the awards of the industrial adjudicators has not taken any action against the management of Municipal Corporation of Delhi despite the petitioner having moved a complaint under Section 2(ra) read with Section 25U of the Industrial Disputes Act, 1947.

5. Respondent no.1 in its counter affidavit pleaded that show cause notice was given to Municipal Corporation of Delhi on 25th January, 2011 and same was returnable for 3rd February, 2011 but no response was received to that notice and thereafter the matter had been referred to the appropriate authority for taking decision regarding prosecution of the Commissioner of Municipal Corporation of Delhi. However, it has not been pleaded by respondent no.1 as to what happened after the decision had been taken way back in February, 2011 to prosecute the Commissioner of Municipal

Corporation of Delhi. Respondent no.2, MCD, has come out with a stand which is in the teeth of the direction given to it by the Labour Court in its award dated 2nd February, 2006 to the effect that his case for regularization should be considered treating him to be in service from 29th March, 1990. It is now being claimed in the counter affidavit by respondent no.2 that the petitioner-workman was to be equated with workman who had been engaged on or before 18th August, 2009 for the purpose of their regularization and not from 29th March, 1990.

6. A perusal of the Labour Court's award shows that the management's witness had admitted that the petitioner-workman was in employment of MCD from 29th March, 1990 and further that its workers who had been employed during that period had already been regularized. Thus, respondent no.2-Municipal Corporation of Delhi is not justified in taking a stand now contrary to its stand taken when the dispute between it and the petitioner-workman was pending adjudication before the Labour Court.

7. In the aforesaid circumstances, I am of the view that there is no justification whatsoever for non-implementation of the award of the Labour Court rendered way back in the

year 2006 by the Municipal Corporation of Delhi and also by the Labour Commissioner by not exercising its authority vested in it in the Industrial Disputes Act, 1947 for ensuring implementation of the awards of the industrial adjudicators.

8. This writ petition therefore deserves to be allowed and is hereby allowed. The respondent no.1 is directed to take necessary steps for the prosecution of the employer, MCD, for the non-implementation of the award dated 2nd February, 2006 of the Labour Court. Let the needful be done within four weeks from today. This writ petition stands disposed of accordingly. For unnecessarily forcing the petitioner-workman to come to this Court for having the award in his favour implemented both the respondents are burdened with costs of Rs.10,000/- each which the petitioner would be at liberty to get recovered in accordance with law in case the respondents do not pay the same to him on their own within a month.

P.K. BHASIN, J

MAY 14, 2012/nk