

\$~9

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

% *Date of decision: May 20, 2013*

+ **W.P.(C) 1078/2012**

BIHARI LAL

..... Petitioner

Represented by: Mr.Anuj Aggarwal and
Mr.Sachin Sharma, Advocates

versus

MCD

..... Respondent

Represented by: Ms.Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. Undisputed position is that the petitioner was employed as a daily wage Beldar by MCD on January 01, 1969 and worked continuously till January 15, 1994 when his services were terminated.
2. Petitioner raised an industrial dispute vide ID No.68/1996 which culminated in an Award in his favour on November 23, 2005, requiring him to be reinstated on the same terms and conditions on which he was working at the time of his termination.
3. While reinstating the petitioner The Industrial Tribunal rightly restricted the terms of the reinstatement to the ones on which the petitioner was employed; for the reason the Tribunal could not have created a post for the petitioner. Respondent challenged the Award by filing a writ petition in this Court which was dismissed. The petitioner was reinstated in service but as a daily wage Beldar.
4. It is in the afore-noted backdrop of facts that we need to consider :

Whether OA No.2806/2011 filed by the petitioner was rightly dismissed in limine by the Tribunal on August 04, 2011; the order impugned.

5. Without notice to the MCD, the Tribunal has dismissed OA No.2806/2011 opining that the direction contained in paragraph 53 of the decision of the Supreme Court in the decision reported as JT 2006 (4) SC 420 Secretary State of Karnataka & Ors. v. Uma Devi & Ors. were of no help to the petitioner.

6. In Uma Devi's case (supra) the Supreme Court held that creation of posts is within the domain of the executive alone and no Court can direct posts to be created. The Supreme Court held that Courts cannot even direct regularization of service. But, in paragraph 53, an exception was carved out. Irregular (as distinct from illegal) appointments were held capable of being regularized by judicial verdicts provided a vacancy/regular post existed and the incumbent had put in 10 years service.

7. Uma Devi's case (supra) did not concern itself with a policy of regularization framed by the executive. Needless to state, the executive can certainly frame a policy for regularization and any violation thereof would be actionable.

8. As per the petitioner, the MCD had framed a policy of regularization in the year 1978. As per him, had he not been dismissed from service in the year 1994 he would have found himself to be regularized. In other words, what the petitioner called upon the Tribunal was to see, and thereafter decide the effect of the termination of petitioner's service and the same being found to be illegal and he being reinstated; the legal effect thereof on the policy of regularization.

9. The Tribunal ought to have considered the fact that the petitioner is a lowly paid employee; his pleadings may not be so focussed; but the

pleadings have to be meaningfully read.

10. We are of the opinion that the issue raised by the petitioner did not warrant a dismissal in limine.

11. We do not prima facie reflect upon the merits of the controversy lest the respondent is prejudiced. Facts noted above and our reflection thereon are limited to highlight the issue which arises for consideration.

12. The writ petition stands disposed of setting aside the impugned order dated August 04, 2011. OA No.2806/2011 is restored for adjudication on merits before the Tribunal.

13. Parties shall appear before the Registrar of the Tribunal on July 01, 2013 who shall thereafter list OA No.2806/2011 before the Roster Bench.

14. No costs.

15. Dasti.

PRADEEP NANDRAJOG, J.

V. KAMESWAR RAO, J.

MAY 20, 2013

mm/rk