

(2006) 07 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2321 of 2004

Delhi Development Authority

APPELLANT

Vs

Shir Kartar and Another

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Citation : (2006) 07 DEL CK 0042

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; Sanjay Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—This writ petition challenges the award dated 3.1.2002 of the Industrial Tribunal-II in Reference No.F24(696)/90-Lab/6641-46. The reference made to the Industrial Tribunal was in the following terms:

Whether the transfer of Shri Kartar from DDA to MCD as Safai Karamchari is illegal and/or unjustified and if so, what direction are necessary in this respect

The Industrial Tribunal in its award said as under:

... It is held that the transfer of Sh. Kartar workman of DDA to MCD as Safai Karamchari is illegal and unjustified of DDA on the post of Mate on which he was working and he would be entitled to get the benefit of continuous service for total length of service for his service benefits like salary equal to regular mate from the date of joining etc. Accordingly, the management No.2 is directed to transfer back the workman to the management No.1 and the management No.1 is directed to take him in its establishment and assign the job of Mate as he was earlier performing and give the service benefits as per the rules and salary equal to regular mate from the date of joining. The appropriate Government be informed. File be consigned to Record Room.

2. On behalf of the petitioner, namely, Delhi Development Authority (in short

`DDA"), it is submitted that the Industrial Tribunal has gone beyond the terms of reference, that the award would disturb the seniority of various other workers who were not even parties to the industrial dispute, that the respondent was never appointed to the post of Mate and Therefore the finding of the Tribunal is clearly an error, that the promotion order would be against the public policy, that the dispute was not an industrial dispute as the cause had not been espoused by any trade union, that there was no evidence before the Tribunal for coming to the conclusion that the workman/respondent was a Mate, that the transfer of the respondent from the DDA to Municipal Corporation of Delhi (in short `MCD") was done in pursuance to the policy decision of the Govt NCT of Delhi, that the respondent is an employee of the MCD and would continue to be so and that even if the petitioner had worked as Mate that would not entitle him to any promotion.

3. Before proceeding further it will be appropriate to briefly reproduce the award. In paragraph 2 of the award the Industrial Tribunal has narrated the statement of claim of the workman/respondent herein. The workman averred that he had been in the employment of the DDA from 1.1.1975 against the post of Sweeper who had been assigned the job of Mate from the initial date of his appointment, that he was regularized in the pay scale with effect from 31.5.1980 on the post of Sweeper, that he was transferred to the DDA vide order No.E.O.No.43 dated 2.3.1989 by which about 20 persons were transferred to MCD, that the transfer of the workman is denial to the post, salary and status of Mate with effect from 1.1.1975 and as such was wholly illegal and unjust and that an award be given in favor of the workman holding that the transfer of the workman from DDA to MCD as Safai Karamchari was illegal and unjustified and he should be regularized as Mate in the proper pay-scale.

4. In para 3 of the award the contentions of the DDA has been narrated. The DDA stated that the workman was taken as a Safai Karamchari in 1981 and was transferred to J.J. Colony Dakshin Puri where he performed the duty of Safai Karamchari up to 1989 and that when the 44 J.J. colonies were transferred to the MCD all the Safai Karamcharis of the J.J. colonies were transferred to MCD as per a policy decision taken by the DDA. The other management, namely, MCD also resisted the claim of the workman. The pleas of the MCD are narrated in paragraph 4 of the award. The MCD submitted before the Industrial Tribunal that the workman joined the MCD as Safai Karamchari and that there is no post of Mate in the CSE Department of MCD and, Therefore, there was no question of the workman joining the MCD as Mate. Although three issues were framed the important issue was only as per the terms of reference which was issue No. 3. The parties were allowed to lead evidence.

5. In its findings the Industrial Tribunal found that the job of Safai Karamchari and that of Sweeper were the same, that the workman had been assigned the job of a Mate by the management of DDA although the workman could not establish that he was promoted to the post of Mate at any point of time. The

Industrial Tribunal further found that the consent of the workman had not been taken while transferring him from management No.1 to management No.2, that office order Ex.WW-1/8 showed that the workman was actually a Mate, that since there was no post of Mate in the MCD the workman was brought down from the post of Mate to that of Safai Karamchari and that by such transfer the career of the workman was blocked. It was then ruled by the Industrial Tribunal that the workman was entitled to be transferred back to DDA on the job of Mate and was also entitled to the total length of service for promotion to the next higher post.

6. It is clear from the above narration that the workman himself never claimed to have been appointed as a Mate. He was a Sweeper. He claims to have been appointed as Sweeper from 1.1.1975 although the DDA admits him to have been in the employment since the year 1981. The terms of reference does not call upon the Industrial Tribunal to establish whether the petitioner was entitled to be treated as a Mate which is a post higher than that of Safar Karamchari or Sweeper. The admitted position was that the petitioner had been employed at the post of Sweeper and had been regularized in the post of Sweeper and had been drawing the salary of Sweeper since 31.5.1986. Till the time of his transfer to MCD vide order dated 2.3.1989 he never questioned this position. Nor did he ever raise any industrial dispute in this regard. The workman filed an affidavit before the Industrial Tribunal by way of his examination-in-chief. He was cross-examined by the management and in his cross-examination he stated, "I was working as a Sweeper with management No.1 from 1.1.75 as a daily wager. I was transferred to management No.2 in 1988 as Safai Karamchari. The nature of a job of Safai Karamchari and the Sweeper are the same". Thus the workman admitted in so many words that he was working as a Sweeper with management No.1 with effect from 1.1.1975. In view of such admission the Industrial Tribunal could not have held that the workman had been working as a Mate or that he was entitled to being treated to have been a Mate from the very date of his appointment. The finding of the Industrial Tribunal in this regard is, Therefore, perverse.

7. The counsel for the workman does not dispute the propriety of transfer of the workers of DDA to MCD in the circumstances in which the transfer of the workman took place. Since the worker was a Sweeper he could be transferred only to the equivalent post, namely, Safai Karamchari. The question of his transfer to the post of Mate could not arise firstly because the workman was not a Mate and secondly because there was no such post in the establishment of MCD. When the transfer was legal and valid the workman/respondent could be transferred only as Safar Karamchari. This transfer, Therefore, was legal and valid and there was no question of his being reverted to the post of Mate in the DDA.

8. The respondent's counsel relies upon the office order dated 21.4.1982 regarding transfer of Mates in which one of the Mate transferred is Kartar. Similarly an attendance register in which the word Mate is written against Kartar

is also relied upon. These, however, are of no value in view of the fact that the workman himself never alleged that he had been appointed as a Mate or had ever been promoted as a Mate. Further he has himself admitted that he was appointed as a Sweeper and had been working as such. The attendance register is not reliable inasmuch as it is only against the name of Kartar that the words 'Mate' and 'Regular' have been mentioned suggesting that it was a deliberate act of forgery or interpolation done for the purpose of litigation. The office order itself cannot change the status of the workman from Sweeper to Mate. It may be stated here that the counsel for the petitioner has pointed out that there is nothing to show that the name Kartar in this office order refers to the workman and to no other person.

9. Hence the writ petition is allowed and the impugned award is set aside. All the parties are directed to give effect to the order of transfer dated 2.3.1989. However, the remuneration paid to the petitioner in the interregnum period at the rate applicable for the Mates shall not be recovered from him.