

(2011) 12 DEL CK 0235
In the Delhi High Court
Case No : Writ Petition (C) 773 of 2006

M.C.D.	Vs	APPELLANT
Moredhwaj		RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0235

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Gaurang Kanth, for the Appellant; Rekha Palli, Ms. Punam Singh and Ms. Amrita Prakash, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioner is aggrieved by the award dated 11th January, 2005 passed by the Industrial Tribunal whereby the reference made to it by the appropriate Government regarding the industrial dispute raised by the respondent-workman for his promotion to the post of Section Officer with effect from 20th October, 1987 has been answered against it and a direction has been issued to it to promote respondent-workman as a Section Officer with effect from said date in proper pay scale with all consequential benefits, monetary or non-monetary.

2. The undisputed facts are that the respondent-workman was employed with the petitioner, Municipal Corporation of Delhi, as a Garden

Chaudhary from 26th August, 1978. It is also admitted case that with effect from 20th October, 1987 some employees who were also working as

Garden Chaudhries and were junior to the respondent-workman were promoted

as Section Officers while the respondent-workman was not promoted. He then raised an industrial dispute which came to be referred to the Industrial Tribunal. That reference was registered as I.D. No. 95/2003.

3. The respondent-workman filed a statement of claim claiming that he possessed requisite qualification for the post of Section Officer and also that he should have also been promoted as a Section Officer as had been done by the petitioner-management in case of Garden Chaudhries who were junior to him.

4. The petitioner-management filed its written statement and it was denied that the respondent-workman was eligible as per the recruitment rules to become Section Officer w.e.f. 20-10-87. It was also denied that his juniors had been promoted as Section Officers while he was not and further that the workmen who had been promoted were promoted strictly as per recruitment rules.

5. During the evidence before the Industrial Tribunal the management's witness, MW-1, admitted in his cross-examination, and which fact had been noticed by the Industrial Tribunal also in the impugned award, that two persons who admittedly were junior to the respondent-workman, namely, Amba Prasad and Hari Chand were promoted as Section Officer even though they did not possess requisite educational qualification.

6. In view of the said admission having been made by the Management's own witness, the learned Industrial Tribunal found no justification for the petitioner-management not giving him the benefit of promotion to the respondent-workman and so award came to be passed against it to the effect that he be also promoted as Section Officer w.e.f 20th October, 1987. Feeling aggrieved, the petitioner-management filed the present writ petition.

7. It has been contended by the Learned Counsel for the petitioner-management that there is no doubt that Shri Amba Prasad and Hari Chand were junior to the respondent-workman and they were promoted to the post of Section Officer but as far as Amba Prasad is concerned, he was promoted pursuant to the direction of Hon'ble Supreme Court given in SLP (C) No. 14010/1995 on 25th September, 1995 and as far as Hari Chand is concerned, it had transpired that he had been given the promotion illegally by some officials of MCD in collusion with him since he did not

possess necessary educational qualifications provided under the recruitment rules for the said post. Subsequently a vigilance enquiry was initiated

against him. However, as far as the status of that enquiry is concerned, Learned Counsel submitted that nothing could be said now as to about the

fate of that enquiry since the enquiry file was not traceable but in any event Hari Chand had retired from service in the year 2001. Counsel further

submitted that since Hari Chand did not possess necessary qualifications as was the case of the respondent-workman here he could not claim that

he had been discriminated against by the petitioner-management inasmuch as he was disqualified as per the recruitment rules and he could not take

any benefit from the illegal and fraudulent promotion obtained by Hari Chand in collusion with some officials of MCD.

8. However, in my view, the aforesaid submissions made by the Learned Counsel for the petitioner-management cannot be accepted and this writ

petition is liable to be dismissed considering the fact that it was not the case of the management that Hari Chand, who was junior to the

respondent-workman, had obtained promotion by fraudulent means without possessing necessary educational qualification. Therefore, the

submission made in that regard for the first time during the course of hearing of this writ petition cannot be entertained and particularly when the

petitioner has also not been able to inform this Court whether finally it had been found as a result of vigilance enquiry, which was allegedly

conducted against Hari Chand, that in fact he had got promotion fraudulently. From the non-supply of that information the only inference this Court

can draw is that whatever was argued today in respect of the case of Hari Chand is not correct and promotion was given to him by relaxing the

rules if he did not possess requisite qualification. The Tribunal has rightly come to the conclusion that if Hari Chand could be promoted then the

workman in the present case could also be promoted and no explanation had been offered by the management for not extending him that benefit.

9. This writ petition is, therefore, dismissed with costs of ` 10,000 which shall be paid to the Delhi High Court Mediation and Conciliation Centre

within 15 days from today and this Centre shall be informed of this order. In case the costs are not deposited with this Centre within the above said

period it shall take steps to get it recovered and if any order from this Court is required to be obtained in that regard it would be at liberty to do so

that costs are recovered.