
(2009) 07 DEL CK 0184

In the Delhi High Court

Case No : Writ Petition (C) No. 4098 of 2007

Municipal Corporation of Delhi

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0184

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; None, for the Respondent

Judgement

S.N. Aggarwal, J.—This writ petition filed by the Municipal Corporation of Delhi (petitioner herein) is directed against an award dated 19.11.2004 passed by Shri M.C. Garg, Presiding Officer, Industrial Tribunal-III, Delhi directing the petitioner to regularize the services of Shri Pratap Singh and Shri Sanoj Kumar and also to extend the same benefit to the widow of Shri Ishwar Singh in terms of its policy for regularization contained in its circular dated 08.10.1992 and also to grant them minimum of the pay-scale which was granted to the regularly appointed heavy vehicle drivers from the date of their initial appointment.

2. Nobody appeared on behalf of the respondents despite service. Hence, this Court has no option but to hear the matter ex parte.

3. I have heard Ms. Saroj Bidawat, learned Counsel appearing on behalf of the petitioner. She has taken me through the impugned award line by line and word by word.

4. The important facts necessary for deciding the present writ petition are that three workmen, namely, Shri Pratap Singh, Late Shri Ishwar Singh and Shri Sanoj Kumar, were appointed by the petitioner as daily rated workers on Muster Roll against leave vacancies for a short period of 80 days w.e.f. 18.10.1995. They were granted extension from time to time till they raised an industrial dispute around 2002 for their regularization and for equal pay for equal work, which was

referred by the appropriate Government for adjudication to the Labour Court vide letter of reference dated 28.05.2002.

5. The Court below has noted several judgments of the Hon"ble Supreme Court and also of this Court in the impugned award. In all these cases referred to in the impugned award, it has been held that daily rated employees appointed in statutory corporations have no legal right for their regularization. It has further been held in the judgments referred in the impugned award that in case daily rated workmen do the same duties as are being done by the regularly appointed employees, then they are entitled to minimum of the pay in the pay-scales admissible to the regular employees without benefit of any increment.

6. The Court below, in its impugned award has referred to a circular of the petitioner dated 08.10.1992 which contains a policy of the MCD for regularisation of daily wager drivers. This policy of the petitioner Corporation is not discussed in the impugned award. Copy of this policy is not available even on the record of this writ petition. Before I proceed further with the matter, I would like to refer to a portion of the impugned award dealing with the factual aspects of the case of the workman and the same is extracted below.

Parties filed their evidences. The workmen Shri Pratap Singh, Shri Sanoj Kumar, and wife of Late Shri Ishwar Singh, who expired during the pendency of this proceedings filed their affidavits, which are exhibits WW1/A, WW2/A and WW3A respectively. In their affidavit, Shri Pratap Singh and Shri Sanoj Kumar reiterated the averments made in their claim petition. It was admitted by Shri Pratap Singh that he was engaged as a leave substitute though he reiterated that he was appointed against a permanent post. It is his claim that having completed more than 240 days in continuous service of the management, he is entitled for the status of a permanent employee and was also entitled for fixation of his salary in proper pay scale. He has referred to the copy of the legal demand notice dated 31st May, 2000, which is exhibit WW1/1 as well as copy of Union's Resolution in favour of the deponent as exhibit WW1/5, exposing his cause. He has also relied circular dated 08-10-1992 regarding regularisation of service of other workmen who were working as muster roll drivers, which is exhibit WW1/9. Same is the affidavit of Shri Sanoj Kumar. In his cross examination, Shri Pratap Singh has admitted that initially he was engaged on daily wage basis as a leave substitute. It is interesting to know that he has attended the meeting whereby the dispute was espoused but he did not sign in the meeting. He also failed to prove that he made a direct representation to the management about his grievance nor he was able to file a copy of the representation filed through the union. He admitted that all his colleagues who were with him were getting the same salary as was paid to him. He was not able to deny that regularization as per the policy of the MCD was done on the basis of seniority. He was unable to show any document to prove that he was engaged against a regular post. Same is the statement of Shri Sanoj Kumar. In so far as Smt. Indira, wife of late Shri Ishwar Singh is concerned, she has also reiterated what has been stated by other workmen. The

only additional thing which she has deposed in so far as the evidence of Indira is concerned, it is of no consequence on the merits of the case nor relevant from the point of view of her claim as husband of Mrs. Indira, has the case similar to the other workmen.

7. It may be seen from the above referred portion of the award that the workmen have admitted during their cross-examination that the regularisation was done by the MCD in terms of its policy on the basis of seniority. The impugned award does not address the issue as to whether the petitioner Corporation has regularised any of its similarly situated employee junior to the workmen in relation to whom the impugned award has been given. It is also not borne out from the impugned award whether the cases of the workmen under consideration fall within the four corners of the policy of the petitioner Corporation contained in its circular dated 08.10.1992 referred in the award. Unless this question is first examined as to whether the workmen who have been directed to be regularised fit in the policy of the petitioner Corporation, the regularisation as directed in the impugned award could not have been ordered.

8. There is no decision in the impugned award as to whether the policy relating to regularization contained in the circular dated 08.10.1992 is applicable to the workmen in the present case or not. Hence till the time it is first decided that the policy for regularization contained in the circular dated 08.10.1992 is applicable to the employees in question, the order directing their regularization cannot be sustained.

9. As far as the directions of the Court below for granting minimum of the pay scale applicable to the regular employees (heavy vehicle drivers) to the workmen in the present case is concerned, I am of the view that even this relief in terms of judgment referred in the impugned award cannot be granted in their favour unless it is first decided that these workmen had performed the same duties as were being performed by the regularly appointed drivers. The fact whether the workmen in question were performing the same duties as were being performed by regularly appointed drivers is a question of fact. There is no discussion or finding contained in the impugned award on this factual aspect. Hence even the directions of the Court below to grant the minimum of the pay scale of the regularly appointed drivers to the workmen in question also cannot be sustained.

10. In view of the above discussion, the case has to be remanded back to the Court below for deciding the case afresh after giving an opportunity of hearing to both the parties after examining both the above noted factual aspect i.e. (i) whether the policy of regularization contained in the petitioner corporation's circular dated 08.10.1992 is applicable to the workmen in question or not and (ii) whether these workmen had performed the same duties as were being performed by the regularly appointed drivers.

11. For the foregoing reasons, the impugned award is hereby set aside. The case is remanded back to the Court below with directions to decide the same afresh

after giving an opportunity of hearing to both the parties. The parties are directed to appear before the Court below for further directions at 2:00 PM on 24.07.2009. The Court below is directed to decide the case afresh as expeditiously as possible preferably within six months to be computed from 24.07.2009, date fixed for appearance of the parties before it. A copy of this order be sent to the concerned Labour Court immediately for information and necessary compliance.

12. In view of the above, this writ petition stands disposed of.