

(2011) 04 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) 769 of 2010

Municipal Corporation of Delhi

APPELLANT

Vs

Raj Kumar

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (2011) 04 DEL CK 0171

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Manjira Dasgupta and Shyel Trehan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 14th July, 2008 of the Industrial Adjudicator on the following reference:

Whether demand to regularize Sh. Raj Kumar s/o Sh. Birbal, daily wage Safai Karamchari in the proper pay scale from the date of his initial appointment is justified and if yes to what relief is he entitled.

in favour of the Respondent workman and directing the Petitioner employer to regularize the workman on the post of Safai Karamchari as per policy of daily wagger/muster roll employee in its phased manner programme.

2. Notice of the petition was issued. The Respondent workman failed to file the counter affidavit inspite of opportunity and after one appearance, also stopped appearing and is proceeded against ex parte. The counsel for the Petitioner MCD has been heard.

3. The writ petition has been preferred after more than 1 1/2 years of the award. The Petitioner MCD has in the list of dates disclosed that the Respondent workman had already filed an application u/s 33C of the Industrial Disputes Act,

1947 for implementation of the award. There is no explanation whatsoever for the delay in preferring the writ petition. No stay of operation/implementation of the award was granted in the present proceedings also. It is presumed that the award has been implemented by now. However since the same entails recurring payment by the Petitioner MCD to the Respondent workman, the matter has also been considered on merits.

4. It was the case of the Respondent workman that he was appointed as a daily wage Safai Karamchari in the Petitioner MCD on 1st January, 1993 and had been performing full time duties of sweeping the roads; that since he was performing the same work as the other permanent employees of MCD he was entitled to receive the same salary/emoluments but the same were denied to him; his employment was not even being regularized inspite of representations and he was, inspite of having remained in employment with the Petitioner MCD for 15 years, being treated as a daily wage Safai Karamchari. The Petitioner MCD contested the claim of the Respondent workman before the Industrial Adjudicator by pleading that the Respondent workman was initially engaged as "Evajdar Safai Karamchari (Substitute)" and he was not working on the muster roll as a daily wager and was thus not entitled for regularization as even under the policy for regularization it was only the daily wager muster roll employees who were entitled to regularization; that the Evajdar Safai Karamchari first converts into daily wager on muster roll and after working so for 240 days is regularized.

5. The Industrial Adjudicator on the basis of the statement of the witness of the Petitioner MCD in cross examination to the effect that the salary of the Respondent workman was being paid on muster roll, held the Respondent workman entitled to regularization in accordance with the circulars of the Petitioner MCD, proved before the Industrial Adjudicator as Ex.WW1/1 & WW1/2 regarding regularization. The Respondent workman was however not held entitled to, with effect from his initial appointment, the same emoluments as the other employees of the Petitioner MCD performing the same work.

6. It is the pleading of the Petitioner that the policy of the Petitioner MCD contained in the circulars aforesaid of regularization is applicable to the muster roll employees and not to an "evajdar" employee as the Respondent was. Since the Industrial Adjudicator has held the Respondent workman to be entitled to benefit of the said circulars on the basis of admission in cross examination of the witness of the Petitioner MCD to the effect that the salary of the workman Respondent was paid on muster roll, it was enquired from the counsel for the Petitioner MCD as to what was wrong with the said finding. It may be noted that no ground in this regard has been pleaded. The counsel for the Petitioner MCD has handed over the copy of the cross examination of the witness of the Petitioner MCD and which shows that the admission as attributed by the Industrial Adjudicator to the said witnesses was indeed made by the witness. That being so, no case for interference with the finding of the Industrial Adjudicator of the Respondent workman being a muster roll employee and being

thus entitled to the benefit of the policy of the Petitioner MCD of regularization as contained in the circulars aforesaid can be made out.

7. The emphasis of the Petitioner MCD is however that no relief of regularization could have been granted by the Industrial Adjudicator. Reliance in this regard placed on:

a) Secretary, State of Karnataka and Others Vs. Umadevi and Others, laying down in para 43 thereof that unless the appointment is in terms of relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee and merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the basis of such continuance;

b) Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, laying down in para 38 thereof that regularization of ad hoc workers is an executive function and deprecating the practice/tendency of Courts/Tribunals to legislate or perform execution functions;

c) Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., laying down in para 5 thereof that completion of 240 days' work does not import the right to regularization and it merely imposes certain obligations on the employer at the time of termination of the service;

d) M.P. Housing Board and Another Vs. Manoj Shrivastava, laying down in para 17 thereof that only because a person had been working for more than 240 days, he would not derive any legal right to be regularized in service.

8. Attention of the counsel for the Petitioner was invited to the judgment of the Apex Court in Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, wherein it was laid down that the principle in Umadevi does not apply to Industrial Adjudicator and under the ID Act and who upon finding prevalence of an unfair labour practice and which under Clause 10 of the Part I of the Fifth Schedule to the ID Act includes employment of workman as badli, casual or temporary and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen, are authorized to issue appropriate directions to the employer.

9. Moreover the aforesaid question also would not arise in the present case. MCD itself has a policy of regularization of workers engaged on daily wages/muster roll in a phased manner. The counsel for the Petitioner MCD has not been able to explain as to why the Respondent workman has not been granted benefit of the said policy.

10. No error is thus found in the award directing the Petitioner MCD to regularize the Respondent workman as per policy.

There is no merit in the petition, the same is dismissed. No order as to costs.