

(2006) 08 DEL CK 0217

In the Delhi High Court

Case No : LPA No's. 854 of 2002 and 916 of 2003

Municipal Corporation of Delhi

APPELLANT

Vs

Ram Kumar and Another

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 76, 77
Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H

Citation : (2006) 132 DLT 415

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Sarabjeet Sharma, for the Appellant; Sanjay Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Letters Patent Appeal No 854/2002 has been filed by the appellant Municipal Corporation of Delhi (MCD) against an order dated 11.9.2002 passed by the learned Single Judge dismissing the appellant's Writ Petition (C) No. 4157 of 1997 thereby affirming an Award dated 4.3.1996 passed by the Labour Court holding the termination of the services of the Respondent No. 1 to be illegal and directing his reinstatement with 50% back wages.

2. The Letters Patent Appeal No 916/2003 has been filed the MCD against an order dated 11.9.2002 passed by the learned Single Judge allowing Writ Petition (C) No. 1538 of 1999 filed by the Respondent No. 1-workman to the extent that the Award dated 4.3.1996 passed by the Labour Court did not grant him full back wages from the date of the termination of his services.

3. The facts leading to the filing of the present appeals are that the Respondent No. 1 workman was employed by the appellant MCD since 5.3.1985 as Mali/Beldar in the Horticulture Department. The services of the Respondent No. 1 were terminated with effect from 26.6.1987. Contending that this was in violation of Section 25F(a), (b) and (c), 25G and 25H of the Industrial Disputes

Act, 1947 ("the I.D. Act") read with Rule 76 and 77 of the Industrial Disputes (Central) Rules, 1957, the Respondent No. 1 sought a reference of the industrial dispute. Vide an order dated 29.11.1988 the following dispute was referred for adjudication to the Labour Court:

Whether the services of Shri Ram Kumar, Mali/ Beldar, have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this record?

4. In his statement of claim dated 19.12.1988, the Respondent No. 1-workman made the following averments:

That the workman Shri Ram Kumar s/o Shri Leela was taken into the employment w.e.f. 5.3.1985 as Mali/Beldar and was initially posted at Roshanara Bagh, Delhi where he worked till 25.4.1986 under Garden Chowdhry Om Prakash Sharma, Section Officer Shri Sunderlal Kalakotty and A.D.H. Shri Radha Kishan Sharma. Thereafter, he was transferred to Sadar Paharganj Zone on 26.4.1986 where he worked under Chowdhry Janak Raj, Sector Officer, Shri Komal Singh and A.D.H. Shri Mange Ram. He was, thereafter, transferred in December, 1986 to Roshanara Bagh where he worked till 25.3.1987, under Chowdhry Shri Om Prakash, Section Officer Shri Brijpal Singh and A.D.H. Shri Ishwar Singh. He was again transferred to Sadar Paharganj Zone w.e.f. 26.3.1987 where he worked till 25.6.1987. He was being paid wages as fixed and revised from time to time under the Minimum Wages Act for unskilled workers while his counterparts who were being treated as regular employees although doing the identical work and the work of same value were being paid their salaries in the pay scale of 193-232 with usual allowances which scale has been revised to the pay scale of 750-940 w.e.f. 1.1.1986 with usual allowances admissible under the rules and with other attendant benefits thereof such as Uniform, Casual Leave, Earned Leave, Gazetted/Festival/Restricted Holidays and Medical Leave etc., which were not being allowed to the aforesaid workman.

That the services of the workman aforesaid have been terminated w.e.f. 26.6.1987 without assigning any valid reason thereof.

Further the Respondent No. 1-workman stated that he was unemployed since 26.6.1987.

5. In reply to the statement of claim, the MCD raised a preliminary objection that the Respondent No. 1 workman had not worked for 240 days in any calendar year. Further, the assertion made in para 2 of the statement of claim by the workman was denied in the following manner:

That para 2 is wrong and denied. It is denied that the workman was engaged w.e.f. 5.3.85 as a muster roll beldar in Hort. Deptt. It is submitted that the workman was engaged in Hort. Deptt. Since 2.7.85 to 25.7.85 (for 18 days only). The applicant worked w.e.f. 26.7.85 to 25.8.85 (for 27 days only) and worked 26.8.85 to 9.9.85 (for 9 days), 10.4.85 to 25.4.85 (for 13 days), 26.9.85

to 25.10.85 (for 9 days), 26.10.85 to 25.11.85 (for 1 day) and 7.3.86 to 25.3.86. It is further submitted that the workman worked 90 days in 1985, 10 days in 1986 and 87 in 1987 as per out record of muster roll. It is further submitted that workman has not completed 240 days in any calendar year. It is further submitted that workman was paid minimum wages as revised by Delhi Administration from time to time for the days he actually worked. IT is denied that his counterparts daily wagers were paid salary in the graded scale along with the attendant benefits like uniform, liveries, CL, medical leave etc. However, it is submitted that all the daily wagers are given 7 gazetted national holiday. It is denied categorically that nature of work performed by a daily wager beldar is identical to regular malies working in Hort. Deptt. It is submitted that in fact there is no post of regular beldar in Hort. Deptt. The Beldars are engaged for casual work and also paid minimum wages.

6. Before the learned Labour Court, Respondent No. 1 workman examined himself as witness and on behalf of the MCD, Shri Sadhu Ram, the Assistant Director (Horticulture) was examined as MW-1. In his cross-examination, MW-1 made the following statement:

It is correct that the muster roll are the authentic record in respect to the attendance and payment of muster roll employees including the concerned workman. These muster rolls are maintained and preserved by the management. After every month the muster rolls are sent to the Accounts Department after payments. The workman has never worked under me. Statement made by me is correct and not the averments made in the written statement filed by the management before the Hon"ble Court. I cannot affirm or deny if the workman initially join in the service of the management w.e.f. 5.3.1985 as Mali/Beldar and was posted at Roshanara Bagh and worked as such till 25.4.1986. I have not see the muster rolls of Roshanara Bagh in respect of the concerned workman. I do not know if the services of the workman were transferred from Roshanara Bagh to S.P. Zone on 26.4.1986 and worked as such till December, 1986. I do not know if the workman was against transferred from S.P. Zone to Roshanara Bagh in December, 1986 and worked there as such till 25.3.1987. I do not know if the workman again transferred from S.P. Zone w.e.f. 26.3.1987 where he worked as such till 25.6.1987. It is correct that regular Beldar/Mali who is paid salary in the scale of Rs. 750-940 plus allowances and the M.R. Beldars who were paid minimum wages belongs to unskilled category and perform 8 hours duty. It is correct that the job of Mali/Beldar is still continuing with the management. I cannot say if no notice or notice pay in lieu of notice was either offered or paid to the workman same is my reply in respect to service compensation. I do not know if no seniority list was Ex. or displayed on or before 26.6.1987. It is incorrect to suggest that I deposed falsely. I have brought the muster rolls, only for the period from 5.10.1985 to 25.10.1985, 26.10.1985 to 25.11.1985. It is incorrect to suggest that I have not brought the muster rolls in respect to the concerned workman intentionally and deliberately as the same proves that the workman has worked continuously and uninterruptedly from 5.3.1985 to 26.6.1987. It is

correct that a large number of Mali/Beldars who joined in the year 1985 onwards are still continuing with the management. Volunteered employees who joined against development must roll are not working with the MCD now as the movement development work is finished they also go. I cannot say without seeing the record as to which development work the workman was appointed what was its duration and estimate. It is incorrect to suggest that I am deposing falsely that he was engaged against development work for a specific project for specific work. I have not brought any record for the development projects etc. for the relevant period. It is incorrect to suggest that I have not brought the same as it proves the case of the workman.

7. The learned Labour Court in its Award dated 4.3.1996 came to the following conclusions:

During cross-examination of the management witness, Shri. Sadhu Ram has stated that he has brought the muster rolls only for the period 5.10.1985 to 25.10.1985 to 25.11.1985 whereas in the demand notice as well as in the claim statement the claimant had given the date wise details of the place and the duration for which he has worked, and even after having that much information, the management has failed to place on record the muster roll of the relevant period to refute the claim of the workman Ram Kumar that he had worked with the management during that period. No document worth name has been placed on record by the management and even suggestion has been given to MW-1 Sh Sadhu Ram that he has not produced the muster rolls as the same could have proved the case of the management. Sh. Sadhu Ram has even failed to produce the record in the development projects and to prove that the claimant was employed for a specific job for a specific period and the work was over and after that his services were not required. When there is no document on record regarding the duration of the job on the date of completion, the oral testimony of the witness Sadhu Ram cannot be accepted especially when the management is in possession of all the documents and still prefers to withheld the same.

It is also surprising that MW-1 Sh. Sadhu Ram has deposed that as per record of the management, the claimant has worked only for 97 days from 5.7.85 to 17.3.86. This case of the management is demolished by its own suggestion given by the management to the workman during his cross-examination. Management has suggested to the claimant that during 1985 he has worked only for 90 days during 1986 he has worked only for 10 days and during 1987 he has worked only for 87 days. These suggestions rather prove the case of the workman that even during 1987 he was on the rolls of the management and that from 1985 till 1987 he had been in the employment of the management. Thus, it is established on record from the testimony of the claimant that he joined the management on 5.3.1985 and had been in the employment of the management till 25.6.1987. His services were terminated on 26.6.1987.

No evidence was adduced by the management to prove the claimant was appointed for a specific period or job, there is nothing on record to clinch that

aspect in favor of the management. Rather the testimony of the claimant clearly indicate that the management had employed him for a period of continuous two years and in these circumstances, one cannot conclude that the claimant was appointed for a specific period or for specific job.

8. On the basis of the above findings of fact, based on the records produced before it, the learned Labour Court concluded that the workman's services had been terminated without notice pay or retrenchment compensation. Accordingly, the termination of the services was held to be in violation of Section 25F read with Section 2(oo) of the I.D. Act. However, since there was no evidence on the record whether the workman was gainfully employed after the termination or not, the Labour Court held that he was not entitled to full back wages. He was accordingly directed to be reinstated with continuity of service with 50% back wages.

9. Aggrieved by the above Award, MCD filed Writ Petition (C) 4157/1997 in this Court and the workman (Ram Kumar) filed WP (C) 1538/1999 to the extent of denial of full back wages. In its grounds in the writ petition MCD made the following averments:

Because the Presiding Officer erred in holding that respondent No. 1 had been on rolls of the corporation from 1985 till 1987 only on the basis the suggestions made in the cross examination.

Because all the relevant record was produced before the Presiding Officer to prove that respondent No. 1 was appointed for specific period and for a specific job.

Because the petitioner corporation had applied the correct method for calculation of actual working days.

10. Therefore, the appellant did not seek to produce any fresh evidence before the learned Single Judge in support of its contention that the Respondent No. 1 workman had not been on its roll from 1985 to 1987. On the other hand, it sought to rely upon the records already produced by it before the Labour Court.

11. In the impugned judgment dated 11.9.2002, the learned Single Judge held that there was no perversity in the conclusion arrived at by the Labour Court in view of the fact that the requisite evidence had not been produced by the MCD to deny the claim of the Respondent No. 1/workman. As regards the denial of full back wages, the learned Single Judge held that there was nothing to indicate that any fact was considered by the Labour Court to come to the conclusion that the Respondent No. 1-workman was not entitled to full back wages. The only reason given by the Labour Court was that restriction of the back wages to 50% would meet "the ends of justice". The learned Single Judge held that this could not be held to be a justifiable reason for denying full back wages particularly when the Respondent No. 1 workman was admittedly not gainfully employed elsewhere during the period he remained out of service. Accordingly, the learned

Single Judge directed that the Respondent No. -1/Workman was entitled to full back wages from the date of notice of demand till the date of his reinstatement. On this basis, while dismissing the writ petition of the MCD, learned Single Judge allowed the writ petition filed by the Respondent No. 1/workman.

12. While directing notice to issue in the LPA No 854 of 2002 on 11.11.2002, a Division Bench of this Court stayed the impugned order of the learned Single Judge subject to appellant MCD depositing 50% of the wages payable to the Respondent No. 1/workman, as directed by the Labour Court, within two weeks. This amount was directed to be paid to the workman as recorded in the order sheet dated 31.7.2003. It appears that for a long time, the MCD did not file any appeal against the impugned order dated 11.9.2002 allowing the Workman's writ petition. Ultimately, this appeal LPA No 916 of 2003 was filed on 17.12.2003 with an application for condensation of the delay of 440 days. By an order dated 19.12.2003 while directing notice to issue in the application for delay and stay, the Division Bench of this Court stayed the direction for payment of full back wages.

13. In the grounds of appeal, while assailing the judgment of the learned Single Judge the appellant has virtually repeated the grounds raised in the writ petition as under:

P. Because the learned Single Judge failed to appreciate that respondent No. 2 has erred in holding that respondent No. 1 had been on rolls of the corporation from 1985 till 1987 only on the basis of the suggestions made in the cross examination.

Q. Because the learned Single Judge has failed to appreciate the fact that all the relevant record/documents were produced which clearly shows that respondent No. 1 was appointed for specific period and specific job.

R. Because the learned Single Judge has erred in holding that admittedly, the respondent No. 1 was not gainfully employed elsewhere and thus he is entitled to full back wages.

14. On 5.4.2004, long after the appeal was filed, the learned Counsel for the appellant, without any application or any affidavit, filed in this Court photocopies of certain muster rolls along with fair typed copies running to about 30 pages. There was no application for permission to file these additional documents. When these appeals were taken up for final hearing, Dr. Sarabjeet Sharma, learned Counsel for the appellant sought to contend that due to his personal efforts and with the help of the officials of the MCD, he was able to trace out the copies of muster rolls for the relevant period which would show that the Respondent No. 1 workman did not work with the Horticulture Department continuously for a period of 240 days. The muster rolls now sought to be produced by the appellant pertains to the periods 26th March to 25th April, 1986, October-November, 1986, 26th March to 25th April, 1987, 26th April to 25th May, 1987, May-June, 1987.

15. Mr. Sanjay Ghosh, learned Counsel for the respondent on the other hand contends that these documents were never produced at any time before the Labour Court or before the learned Single Judge and ought not to be permitted to be produced for the first time in these letters patent appeals. He submitted that it would be impermissible for the appellant to assail the award of the Labour Court on the basis of certain documents which were not before it despite numerous opportunities. Further it was submitted that unless the entire muster rolls for the period in question were produced, and in original, it would be difficult to verify the correctness of the appellant's contentions. Moreover, even the records now produced do not pertain to entire period mentioned in para 2 of the reply filed by the MCD before the Labour Court.

16. We find considerable force in the objection raised by the counsel for the Respondent. The industrial dispute in the present case commenced some time in the year 1988 and throughout the period from 1988 till 2004, i.e., over 16 years, the MCD never thought of producing these records. It is intriguing how all of a sudden, more than one and a half years after the filing of the present appeal, the appellant managed to trace out these documents. The learned Counsel for the appellant informs us that he had made personal efforts to trace out the old records. However, there appears to be no Explanation of this sort anywhere since no application seeking to produce these documents has been filed. It is another matter such permission ought not to be granted at all, since what was produced before the Labour Court, as noticed in the extracted passage of its judgment, were only the muster rolls for the period 5.10.1985 to 25.11.1985. The documents now sought to be relied upon were not produced before the learned Single Judge. In the absence of any Explanation as to where these documents were and why they could not be produced earlier, we see no reason to permit the appellant to rely on these documents for the first time in the appeal.

17. Be that as it may, even these documents do not support the submissions made in the reply filed by the MCD before the Labour Court. We still do not have the muster rolls for any period prior to 25.3.1986. What is being produced, is the record for the period after 25.3.1986 and that too is incomplete. For instances even now there is no record for the periods 5.3.1985 to 5.10.1985, 26.11.1985 to 25.3.1986, 26.4.1986 to October 1986 and December 1986 to 26.3.1987. Therefore, even these records are not the complete records. In the absence of records for the aforementioned periods there is no basis to the submissions of the appellant that the Respondent No. 1 worked only for 90 days in 1985, 10 days in 1986 and 87 days in 1987. Therefore, even the records now sought to be produced selectively do not support the plea of the appellant. It is not open to the appellant to selectively produce the records for the period which suits it and not produce it for the period for which the respondent had placed reliance on.

18. Having considered the records of the case, the judgment under appeal and the submissions of the learned Counsel for the parties, we are satisfied that no interference is called for with the award of the Labour Court and the judgment of

the learned Single Judge. We find no infirmity in the conclusion arrived at by the Labour Court, on the basis of the evidence before it, that the Respondent No. 1 workman was in the employment of the appellant from 5.3.1985 till 26.6.1987 and that his termination was in violation of Section 25F of the I.D. Act. Accordingly, the LPA No 854/2002 which is directed against an order dated 11.9.2002 passed by the learned Single Judge dismissing the appellant's Writ Petition (C) 4157/1997 is without merit.

19. As regards the LPA No. 916/2003, there is a delay of 440 days in filing the said appeal. Considering that this appeal is filed against an order dated 11.9.2002 passed by the learned Single Judge on the same day as the order dismissing the MCD's Writ Petition (Civil) No. 4157/1997, it is surprising that MCD did not file an appeal against this order simultaneously with the filing of the other LPA No 854/2002. The Explanation for the delay is that although both the writ petitions were heard together and the orders were passed on the same day, it is only during the hearing of the LPA No. 854/2002 that "it was pointed out that there were two writ petitions and thus two appeals were required to be filed, as per law". We find this Explanation incredible as certainly the learned Counsel for the MCD would have known that an appeal was required to be filed against an order dated 11.9.2002 allowing the writ petition filed by the Respondent No. 1 workman. It is stated that on 3.11.2003 a letter was written to the Chief Law Officer, MCD to "find out as to if there was any other connected petition, as was pointed during the course of hearing." Even thereafter, the present appeal was filed only on 17.12.2003. We find the above Explanation wholly unsatisfactory. In our view, no sufficient ground for the condensation of the delay of 440 days in filing the appeal is made out.

20. Even on merits, we find no reason to interfere with the impugned order dated 11.9.2002 passed by the learned Single Judge granting full back wages. Nothing has been brought on record by the appellant to show that during the entire period that the Respondent No. 1 workman remained out of service, he was gainfully employed or had any means of subsistence. If the appellant wanted to dispute the claim of the Respondent No. 1 workman that he was not gainfully employed, it was for the appellant to produce the relevant evidence. It has failed to do so at any stage of the proceedings. We are of the view that this appeal deserves to be dismissed both on the ground of delay as well as on merits. The appellant will now comply with the directions as to reinstatement and payment of full back wages as contained in the impugned order of the learned Single Judge within a period of four weeks, and in any event, not later than 30.9.2006.

21. With the above direction, LPA Nos 854/2002 and 916/2003 are dismissed. Interims orders stand vacated.