

(2011) 12 DEL CK 0146

In the Delhi High Court

Case No : Writ Petition (C) 1208 of 2010

New Delhi Municipal Council

APPELLANT

Vs

Shri Rambir and Another

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0146

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

Bench : Single Bench

Advocate : P.C. Sen and Ms. Aanchal Yadav, for the Appellant; Rajiv Aggarwal and Mr. Anuj Aggarwal, Advocates for R-1, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioner challenges the initiation of proceedings against it by respondent no. 2 for the recovery of of ` 5,06,022 and the demand notice dated 21st January, 2010 allegedly issued at the instance of the respondent no.1/workman after he had got an award in his favour from the Industrial Tribunal in ID No. 03/2008 directing his regularization as a Mali/Beldar as per the petitioner's policy of regularization w.e.f. 1st April, 1997 but was not paid his wages w.e.f. 1st April, 1997 payable to a regular employee.

2. The only grievance of the petitioner, as argued by its counsel, is that even though the learned Tribunal had given the relief of regularization to respondent no.1 vide its award dated 25th July, 2008 but no relief of any kind of consequential benefit was given to him and consequently his initiating recovery proceedings by approaching the Assistant Collector, respondent no. 2 herein, for getting his wages as a regular employee from 1st April, 1997 was not justified and even the action of the Assistant Collector in issuing the recovery certificate was not justified.

3. The concluding para of the award dated 25th July, 2008 of the Industrial Tribunal giving the relief of regularization to respondent no. 1-workman reads as

under:

Keeping in view of the facts and circumstances and discussion made above, the management is directed to regularize the workman on the post of Mali/Beldar as per policy w.e.f. 01.04.1997, the date when the counterparts of the workman were regularized. The reference is answered in favour of the workman. The award is passed, accordingly.

4. That award was challenged by the petitioner by filing a writ petition (being W.P. (C) No. 9852/2009) but the same was dismissed by this Court on 7th July, 2009. Thereafter, the respondent no. 1-workman appears to have approached the concerned authorities for getting the difference in his wages as a daily wager and regular employee and then the Assistant Collector issued recovery certificate for ` 5,06,022.

5. There is no doubt that there was no specific direction given to the petitioner-management to pay respondent no.1-workman his wages also as a regular employee w.e.f 1st April, 1997 but it was clearly mentioned in the award that respondent no.1-workman had to be regularized as per the management's policy of regularization of daily wagers. During the course of hearing today, Learned Counsel for the petitioner-management had admitted that as per the policy of regularization formulated by petitioner-management temporary/daily wage employees who were to be regularized were entitled to all consequential benefits also. Learned Counsel had also today produced before me two awards of the Industrial Tribunal no. II passed on 15th April, 2008 in I.D. No. 84/2005 & I.D. No. 86/2005 wherein under similar circumstances, as exist in the present case, the NDMC had in its written statement opposed the same kind of relief which the respondent no.1 herein had claimed but after framing of issues the petitioner-management through its Director (Horticulture) had agreed for passing of an award for the regularization of the concerned workmen along with all consequential benefits w.e.f. 1st April, 1997. Accordingly the awards were passed in those two cases by the Industrial Tribunal directing the regularization of the concerned workmen with all consequential benefits was 1st April, 1997. The statements made on behalf of the NDMC by its Director (Horticulture) in these two cases clearly show that as per the policy of regularization of daily wagers any worker who was to be regularized was entitled to get consequential benefits also. However, the benefit of wages of a regular employee was not given to the respondent no. 1 by the petitioner herein despite the fact that the Industrial Tribunal had directed his regularization as per the policy of regularization framed by NDMC. No justification was given by the petitioner as to why in the present case the claim of the workman was not conceded as was done in the case of other workers.

6. In these circumstances, the filing of the present writ petition by the petitioner-management for challenging the respondent no.1-workman's claim for wages as a regular employee w.e.f. 1st April, 1997 was highly unjustified and in fact the petitioner-management's action in opposing the claim of the respondent no.1

smacks of mala fides.

7. Counsel for the petitioner had also made a submission that earlier to the raising of the dispute about his regularization the respondent no. 1 had been removed from service and he had raised an industrial dispute challenging the action of the petitioner-management and he had got the relief of reinstatement in service. It was further submitted that even though the reinstatement of respondent no. 1-workman had been ordered by the Labour Court on 2nd September, 1999, he waited for about 5 years to raise a demand for his regularization and there being no justified reason for that much delay having been given by him, he was in fact not entitled to get any relief whatsoever from the Industrial Tribunal. However, I am not inclined to entertain this submission considering the fact that this writ petition was not filed on this ground. In fact, when the relief of regularization was given to respondent no.1-workman by the Industrial Tribunal w.e.f. 1st April, 1997, the petitioner-management had challenged the award of the Industrial Tribunal but had failed in that challenge and its writ petition (being W.P.(C) No. 9852/2009) was dismissed by this Court vide judgment dated 7th July, 2009. While dismissing the earlier writ petition this Court had observed in its judgment that the Tribunal had directed the regularization of respondent no.1-workman w.e.f. 1st April, 1997 with all consequential benefits. Thereafter, the workman was regularized w.e.f. 1st April, 1997, as was stated by the counsel for the petitioner. Thus, even otherwise now the petitioner cannot contend that because of the delay in raising the dispute for his regularization after his re-instatement had been ordered in the year 1999 the workman could not have been ordered to be regularized. Counsel for the petitioner-management had also submitted that he had tried to get instructions in the matter as to why the respondent no.1 in the present case was not given the benefit of all consequential benefits even as per the NDMC's policy of regularization as had been volunteered by the Director (Horticulture) in the already referred two cases of other workmen but no reason was furnished to him to be communicated to this Court during the course of hearing and simply he was requested to seek more time to justify the making of statement by Sh. Subhash Chandra in other two cases and not in the present case. However, this Court did not consider it appropriate to adjourn this matter for that purpose.

8. This writ petition is accordingly dismissed and as I have already observed that filing of the present writ petition challenging the justified demand of respondent no.1-workman smacks of mala fides and the successful workman was forced to come to Court to contest this frivolous writ petition costs of ` 25000 are also imposed upon the petitioner to be payable to the respondent no. 1-workman.