

(2007) 02 DEL CK 0098

In the Delhi High Court

Case No : Cont. Cas. (C) 729 of 2005 with CMs No"s. 11118 and 14488 of 2005 and 11090-91 and 17595 of 2006

Prakash Kumar Saini

APPELLANT

Vs

M.C.D and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : (2007) 95 DRJ 85

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : K.C. Mittal, Sandeep Sethi and K.C. Dubey, in CM. Nos. 11090-91/200, for the Appellant; Sanjeev Sabharwal, for the Respondent

Judgement

S. Muralidhar, J.—The petitioner was working as a Mate in the Delhi Development Authority (DDA) in a work charge establishment. Along

with four other similar employees, he was appointed as a regular Assistant Sanitary Inspector (ASI) in the DDA on 26.11.1991 on the basis of the

recommendations of a Selection Committee. It was stipulated in the said letter that the period spent by the work charge mates on work charge

establishment ""will be regularized as per the provisions of EO No. 130 dated 10.1.1991"".

2. The aforementioned E.O. No. 130 dated 10.1.1991 is a communication by the Commissioner (Personnel) DDA informing that the Lt. Governor

of Delhi/Chairman, DDA had been pleased to order that ""all the work charge employees of the Delhi Development Authority would be treated as

a part of the regular work charge establishment, with immediate effect"".

3. Three years prior to this, in 1988, 44 resettlement colonies were transferred from the DDA to the Municipal Corporation of Delhi (MCD).

Consequently, some of the work charge Mates of the DDA were transferred to the MCD. These included the applicants in CM Nos. 11090-

91/2006 who had been appointed as work charge Mates in the DDA in 1983. However, at the time of such transfer to the MCD, these work

charge Mates had not been regularised as ASIs. In 1995, 382 residential colonies were transferred from DDA to the MCD and this resulted in a

further transfer of several employees from the DDA to the MCD. The petitioner who was working as regular ASI with DDA was also transferred

to the MCD in 1995 along with two other ASIs.

4. As a result of the above transfers, there were two sets of "transferred" employees from the DDA to the MCD, viz., the pre-1995 transferred

employees which included the applicants in CM Nos. 11090-91/2006, and the 1995 transferred employees which included the petitioner. While

both these categories belonged to the category of employees "transferred" from the DDA to MCD, there was one distinguishing feature. While the

1995 transferred employees, including the petitioner, were regularised as ASIs in the DDA on 26.11.1991 much before they were transferred, the

pre-1995 transferred employees were not so regularised as ASIs by the DDA prior to their transfer to the MCD. In the MCD, Therefore, one

issue that has arisen concerns the relative seniority of these two sets of transferred employees in the cadre of ASIs. A second issue concerns the

relative seniority of the pre-1995 transferred employees vis-a-vis regular ASIs already on the rolls of the MCD.

5. Both sets of transferred employees do not dispute the position that a work charge employee can count his seniority only from the date of

regularisation in the regular establishment. They rely on the judgment dated 6.12.1991 of the Division Bench of this Court in CW No. 647 of 1991

where the claim of some of the work charge employees of the DDA for seniority by counting the period of their services prior to their dates of

regularisation was negated. The Division Bench observed:

It appears that work charge employees like the Petitioners can only be recruited against the direct recruitment quota because Rule 6(B) postulates

relaxation of age in the case of regularization from work-charge employees. This clearly indicates that work-charge employees will be regarded

only as being eligible for direct recruitment. This being so their seniority can only

be with effect from the date when they are regularly appointed in the quota of the direct recruits in their regular establishment. The Petitioners have been regularized in the work-charge establishment. We find no further relief can be granted to the Petitioner.

6. On the two issues concerning the transferred employees, as noticed in para 4 above, writ petitions were filed in this Court. The petitioner filed

WP(C) No. 3181/1997 in this Court on the question of the seniority of the 1995 transferred employees vis-à-vis the pre-1995 ones. This

petition was disposed of by a judgment dated 24.3.2005 of a learned Single Judge with the following direction:

The only direction which is called for in this Petition is that the MCD shall proceed strictly on the basis of the regular appointment of persons as to

the post of ASI in the Transferred Cadre, especially for promotion to the post of Sanitary Inspector.

7. The pre-1995 transferred work charge Mates filed Writ Petitions No. 5320/2003 and 4783-807/2005 on the second issue of their seniority

vis-à-vis regular ASIs already on the MCD rolls. The prayer in W.P (C) 5320/2003 was that the 395 transferees (like the applicants in C.M

Nos. 1109-91/2006) and the ASIs who were already on the rolls of MCD in the regular cadre should be treated on par for the purpose of

promotion to the next higher post of Sanitary Inspector (SI). In its reply to this petition, MCD pointed out that employees who were transferred

from the DDA to the MCD, consequent upon the transfer of 44 resettlement colonies, were not part of the regular cadre of ASIs in the MCD but

have been placed in a separate cadre titled as "transferred cadre". The learned Single Judge by judgment dated 24.3.2005 dismissed WP(C)

5320/2003 negating the plea of the pre-1995 transferred employees by holding that the "petitioners must seek promotion within their own cadre".

8. After the judgment dated 24.3.2005 of the learned Single Judge in W.P (C) 3181/1997, the MCD appears to have taken up the issue of

regularization of the pre-1995 transferred employees. A note had been prepared earlier in August 2003 in the MCD that the work charge

employees transferred to the MCD prior to 1995 may also be granted regularization with effect from 10.1.1991 by adopting the decision of the

Hon'ble Lt. Governor contained in EO No. 130 dated 10.1.1991. This decision

had been approved by the Commissioner on 23.8.2003. On the basis of this note, a circular dated 18.5.2005 was issued by the MCD stating that vide order dated 23.8.2003, Commissioner, MCD ""has been pleased to regularise the work charge employees with effect from 10.1.1991 who were transferred from DDA to MCD and also the seniority will be fixed since 10.1.1991"".

9. Following the above regularisation order, a provisional seniority list of the transferred ASIs was circulated by the MCD on 15.9.2005 and objections were invited as a prelude to finalizing the seniority list. In the said provisional seniority list the pre-1995 transferred employees, regularised retrospectively from 1.10.1991, were placed en bloc above the 1995 transferred employees who had been regularised with effect from 26.11.1991.

10. Aggrieved by the said provisional seniority list the petitioner, who is a 1995 transferred employee, filed the present contempt petition.

According to the petitioner, the provisional seniority list has been prepared in disobedience of the order dated 24.3.2005 passed by the learned

Single Judge in WP(C) No. 3181/1997. The grievance is that the pre-1995 transferred employees could not have been regularised with effect

from 10.1.1991 and that this has been done only to defeat the rights of the petitioner.

11. When this contempt petition was listed on 5.10.2005, this Court passed an order restraining the MCD ""from finalising the seniority list of

Assistant Sanitary Inspectors"". The petitioner was permitted to file objections to the provisional seniority list without prejudice to his contentions in

the present petition. After the aforementioned interim order was passed, Letters Patent Appeals, being LPA Nos. 2478-85/2005, were filed by

the applicants in CM No. 11090-91/2006 (who are the pre-1995 transferred employees) against the judgment dated 24.3.2005 passed by

learned Single Judge in WP(C) No. 3181/1997. The said appeal is stated to be pending before the Division Bench of this Court. It is not in dispute

that no stay of the judgment date 24.3.2005 of the learned Single Judge has yet been granted.

12. Three applications have been filed since then in the present contempt petition. CM No. 11091/2006 is by the pre-1995 transferred

employees, seeking to be imp leded in this contempt petition. It is stated in the said application that after the stay order passed by this Court on

5.10.2005, the MCD, by an order dated 14.6.2006 is seeking to promote the ASIs in the general cadre of the MCD as SIs and that this would

adversely affect the applicants (the pre-1995 transferred employees) whose services as ASIs had been regularised by the MCD by circular dated

18.5.2005 retrospectively with effect from 1.10.1991. On this basis, these applicants have also moved CM No. 11090/2006 seeking vacation of

the stay granted by the order dated 5.10.2005. The third application, CM No. 17595/2006, has been filed by the MCD also seeking vacation of

the stay granted on 5.10.2005 stating that it should be permitted to finalize the seniority list which, according to the MCD, is not in violation of the

order dated 24.3.2005 passed by the learned Single Judge in WP(C) No. 3181/1997.

13. Mr. K.C. Mittal, learned Counsel appearing for petitioners, submitted that the back-dated regularization of pre-1995 transferred employees as

ASIs by the order dated 18.5.2005 is not only impermissible in law but done only with a view to defeat the order dated 24.3.2005 passed by the

learned Single Judge of this Court in WP(C) No. 3181/1997. Mr. Sandeep Sethi, learned Senior Advocate appearing for the applicants in CM

No. 11090 and 11091/2006 disputes this and contends that there is no violation of the order dated 24.3.2005 passed by the learned Single Judge.

He insists that the said order has in fact been complied with in as much as inter se seniority in the cadre of ASIs transferred from DDA to the

MCD has been determined only on the basis of their respective dates of regularization. Since the applicants in CM No. 11090-91/2006 have been

regularised from an earlier date i.e 1.10.1991 they have been rightly placed over the petitioner. Mr. Sanjeev Sabharwal, learned Counsel for the

MCD submits that they have implemented the order dated 24.3.2005 of the learned Single Judge and prepared the provisional seniority list only on

the basis of respective dates of regularization of the two sets of transferred ASIs.

14. To this Court is appears that the scope of the present contempt petition is confined to examining whether the order dated 24.3.2005 passed by

learned Single Judge of this Court in WP(C) No. 3181/1997 has been willfully disobeyed by the MCD while preparing the provisional seniority list

circulated by its letter dated 15.9.2005. There can be no dispute that the outcome of the appeals (LPA Nos. 2478-85/2005 filed by the applicants

in CM No. 11090-91/2006) before the Division Bench will determine whether the provisional seniority list has been correctly prepared. If the

appellants in the said appeal succeed, the order dated 24.3.2005 passed by learned Single Judge would either be set aside or modified. If they

don't, it would get affirmed. In either event, consequential directions will have to be issued on the question of inter se seniority of the pre-1995 and

post-1995 transferred employees. In these circumstances, where the Division Bench is seized of the issue, it is neither proper nor desirable that any

order touching upon the legality or otherwise of the provisional seniority list should be made by this Court in contempt proceedings.

15. The appropriate course for the parties aggrieved by the said provisional seniority list would be to approach the Division Bench with an

appropriate application in the pending appeals seeking interim orders. Therefore, the only direction that is required to be given in these proceedings

is this: the parties here, including the applicants in C.M. Nos. 11090-91/2006, are permitted to approach the Division Bench in LPA No. 2478-

85/2005 with an appropriate application seeking interim orders. In order to give the parties some time for doing this, the interim order made by this

Court on 5.10.2005 restraining the MCD from finalizing the seniority list is continued for another two weeks i.e. till 20.2.2007.

16. With above directions, the contempt petition and the applications are disposed of with no orders as to costs.