

(2013) 02 DEL CK 0280

In the Delhi High Court

Case No : LPA 87 of 2013 and CM 2732 of 2013

Pratap Singh

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0280

Hon'ble Judges : D. Murugesan, C.J; V.K. Jain, J

Bench : Division Bench

Advocate : Anuj Aggarwal, for the Appellant; Arun Birbal, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant claims to have been appointed by the respondent with effect from 25.1.1986 and rendered services till 20.3.1987. Alleging that he was not allowed to work with effect from 3.4.1987, the appellant raised an industrial disputes, which was referred to the Labour Court for adjudication. The respondent refuted the claim of the appellant before the Labour Court by filing a written statement claiming that no appointment order was available in its record. It was further alleged in the written statement that the appellant had obtained bogus order of posting/transfer as Chowkidar, in connivance with some person and had also obtained salary for the aforesaid period without having been actually employed. This was also the case of the respondent that a large scale scam of working on the basis of forged postings/transfer orders was detected in DDA and many such instances were detected. The respondent also filed along with its written statement a copy of the establishment order No. 47 dated 24.1.1986 (Ex. R1) purportedly relating to relieving the appellant from Housing Division-XIV to enable him to report to the Executive Engineer (RD-1) for further posting and claimed that this was a forged document. It was further stated in the written statement that a criminal case had also been registered by the police against the appellant. The Labour Court passed an award dated 7.9.1995 in favour of the appellant. On being challenged by the respondent by way of a writ

petition being W.P.(C) No. 1133/1994, this Court set aside the said award dated 7.9.1995 and directed passing of a fresh award after giving opportunity to the parties to adduce evidence. Thereafter, a fresh award came to be passed on 7.5.2011, on the basis of reconstructed record of the trial, since the original record had in the meanwhile been destroyed in routine weeding out of old records. Again an award was passed by the Labour Court in favour of the appellant. Being aggrieved from the award dated 7.5.2011, the respondent approached this Court by way of a writ petition which was allowed vide impugned order dated 21.8.2012. Being aggrieved from the allowing the writ petition, the appellant is before us by way of this appeal.

2. The only question which comes up for consideration in this case is as to whether the appellant was officially employed by the respondent DDA at any point of time or not. During the course of hearing, we asked the learned counsel for the appellant as to what were the Recruitment Rules applicable to the post to which the appellant claims to have been appointed and as to what was the mode of his appointment. The learned counsel for the appellant expressed ignorance about the recruitment rules but admitted that the appellant had not appeared in any written test or any interview held by the respondent DDA. We then asked the learned counsel for the appellant as to whether any appointment letter issued was issued by the DDA. The learned counsel for the appellant stated that no appointment letter was issued to the appellant at any point of time. His contention was that the appellant was paid salary for the period from 24.1.1986 to 20.3.1987, which according to him was the proof of his employment. We, however, cannot agree. In the ordinary course, an organization like DDA would make appointment only in terms of Recruitment Rules applicable to the post for which the appointment is sought to be made and such rules would provide for holding a written test and/or interview. An advertisement in the newspapers is normally given for making appointment to a public position and the persons desirous of seeking appointment have to submit the application seeking appointment and undergo the process of recruitment such as written test and/or interview. It is an admitted position that no advertisement in any newspaper was issued by the respondent inviting applications for appointment to the post against which the appellant claims to have been appointed. There is no record to show that the appellant at any point of time submitted an application to DDA/ respondent for appointment with it. In these circumstances, it would not be possible for us to accept the contention that the appellant was appointed by the respondent DDA without issuing any advertisement in the newspapers, without the appellant having even submitting an application for appointment and without any appointment letter having been issued to him.

3. We are conscious of the fact that appointment on muster roll basis are sometimes made without issuing advertisements in the newspapers and without holding any written test or interview, but when a person goes to the Court with a claim that he was appointed with a public body such as Delhi Development Authority and the alleged appointment is denied by the concerned public

authority, it would be incumbent for the person concerned to prove the actual appointment with the public authority concerned. That having not been done, we cannot accept the case set out by the appellant in this regard.

4. The relieving order dated 24.1.1986 purports to be issued by the Executive Engineer (Housing Division-XIV) of DDA, purporting to relieve the appellant from Housing Division-XIV in compliance of EO No. 32 dated 21.3.1986. This order pre-supposes posting of the appellant in Housing Division-XIV prior to 24.1.1986. We specifically asked the learned counsel for the appellant as to how the appellant could have been relieved from Housing Division-XIV on 24.1.1986 when the case set out by him is that he was appointed only on 25.1.1986. The learned counsel for the appellant thereupon submitted that the aforesaid order was not submitted by the appellant. We fail to appreciate as to how this order could have been submitted by some person other than the appellant when this order pertains only to the appellant Pratap Singh. In fact, before the learned Single Judge, the learned counsel for the appellant did not dispute the aforesaid office order dated 24.1.1986 and this admission was recorded in paragraph 14 of the impugned order. Since this is not the case of the appellant before us that the office order dated 24.1.1986 is a genuine document, there is no escape from the conclusion that the aforesaid office order is a forged document. Since the document pertains only to the appellant Pratap Singh, it could not have been submitted to DDA by any person other than the appellant. Thus, it is quite obvious that the appellant submitted a forged office order to DDA and drew salary on the basis of this forged document.

5. The office order dated 24.1.1986 has a reference to EO No. 32 dated 23.1.1986, pursuant to which the appellant as relieved from Housing Division-XIV. However, no such EO has been produced by the appellant which is yet another indicator that the office order dated 24.1.1986 was a forged document. In fact, it was clarified by the Executive Engineer, Housing Division-XIV vide order dated 24.2.1987 that the appellant was not relieved by them vide EO No. 47 dated 24.1.1986. This is yet another proof that the office order dated 24.1.1986 was a forged document.

The purporting office order dated 24.1.1986 (Ex. R-1) refers to EO No. 32 dated 23.1.1986 issued by A.D. to CE's (E.Z.) in respect of the appellant Mr. Pratap Singh. However, on inquiry it was reported by EO that the appellant was not transferred by his office and in fact EO No. 32 dated 22.1.1986 pertains to one Gyan Prakash who was a bonafide employee of DDA.

Since the appellant was never appointed by the respondent, he was not entitled to any relief from the Labour Court, and the respondent was fully justified in not allowing him to join duty.

For the reasons stated hereinabove, we find no merit in this appeal and the same is hereby dismissed without there being any order as to cost.