

(2005) 02 DEL CK 0097
In the Delhi High Court
Case No : WP (C) No. 1656-66 of 2004

Ram Kishan and Others

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 118 DLT 29 : (2005) 80 DRJ 729

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Sanjoy Ghose and Pragnya, for the Appellant; Arun Birbal, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—Rule. With the consent of the counsel for the parties, the writ petition is taken up for hearing.

2. This writ petition challenges the interim order dated 4th August, 2003 passed by the Industrial Tribunal No. 1, declining the interim relief to the petitioners for payment of wages. This case discloses an unfortunate state of affairs. The petitioners are 11 employees/beldars out of 144 beldars employed by the DDA at Rohini who were transferred on 1st December, 1994 by the respondent No. 1/ DDA to the respondent No.2/MCD. Thereafter, there was some dispute between the parties whether the transfer by DDA to MCD could have been effected or not. On 14th February, 1995, the petitioners served a legal demand notice upon respondent Nos. 1 and 2, on the ground that their redesignation was unfair, arbitrary and illegal. But, the respondents failed to positively respond to the same. Therefore, on 13th March, 1995, the petitioners filed a writ petition being CWP NO. 826/1995 before this Court which was dismissed on 5th February, 1998 as it was stated to involve disputed questions of fact. However, the petitioners were given the right to raise an industrial dispute. Which dispute is presently awaiting adjudication before the Industrial Tribunal. Eventually, it was accepted that the petitioners were beldars working with the MCD in the Conservancy

Sanitation & Engineering (C.S.E.) Department. There was a dispute between the parties owing to the beldars in DDA such as the petitioners being made to work as the Safai Karamcharis. Eventually that matter was sorted out as reflected in the letter dated 3rd March, 1999 issued by the Director (Estt.), DDA to the Addl. Commissioner, MCD, Delhi, which reads as under:-

" Sub : Transfer of services of 20 colonies (1st Lot) and staff From DDA to MCD repatriation of staff of CSE Department

Sir,

This relates to repatriation of eleven beldars from M.C.D. to D.D.A. By the Asst. Commissioner/Vide letter No. 179/01-VI/AC/ CSE/ 99 dated 5.2.1999. These transferred employees have been asked to report Executive Engineer (Rohini), D.D.A. This matter has been examined this and I have been directed to inform that these beldars amongst the staff which was transferred while service of 20 colonies (1st Lot) was transferred from D.D. A. to M.C.D., under "Sewerage Scheme" in C.S.E. Department, M.C.D. However, these beldars not join duty in M.C.D. during 1994 and went to the Court against heir's transfer orders. Subsequently ,the Court dismissed the case and all these beldars were directed by Controlling Officer, D.D.A. to report to MCD during February/1998 and we are working in CSE. Deptt. MCD. Now, they have repatriated by the Asstt. Commissioner, CSE (KO) stating that they have refused to work as sewage beldars. In this regard, a persual of record shall reveal that while transferring services of 20 colonies to MCD, 144 beldars were transferred under sewage services in CSE Department. Since the duties being assigned to them by CSE. Department was different as was being performed in DDA and they were reluctant to work as sewage beldars. A meeting was held under the Chairmanship of then Principal Secretary (UD) and it was decided that 144 beldars transferred to CSE Department shall be adjusted against the beldars of Engineering Wing in the subsequent lot and all these beldars were retained by MCD, these eleven beldars are among those 144 beldars. A letter from Chief Engineer, MCD sent to Commissioner (Personnel), DDA, during 1995 to enclosed which is self contained.

2. Furthermore, a perusal of subsequent notification issued by MCD regarding taking over of services of colonies from DDA to MCD reveals that these 144 beldars have been adjusted against the mutually agreed labour (beldars) under Road and Path services under subsequent list numbering 89, 9 and 46 in IInd, IIIrd and IV lot respectively.

The foregoing, amply clarifies that beldars are amongst the beldars who have already been adjusted against Road and Path services by the MCD. And, this factual position less sight of Asstt. Commissioner CSE (HQ) and instead of posting/ directing these beldars in Engineering Wing, MCD, repatriated to DDA.

In view of above, you are requested to look into the matter and issue suitable directions to Asst. Commissioner (CSE) to withdraw the repatriation orders dated

5.2.99 immediately as these beldars have contended they have not been paid salaries for last eight months and are on the verge of starvation. They have also threatened for demonstration in front of the houses of Authority and taking the hard step of immolation along with their family members, if their salaries are not paid immediately."

3. This stand taken in the letter of Director (Estt.) has also been followed by the order dated 9th January, 2002 of Secretary (Labour), in which the term of reference at the instance of the petitioner was as follows:-

"Whether the transfer of workmen as shown in Annexure "A" from DDA to MCD by changing their service condition is illegal and unjustified and if so, to what relief are they entitled and what directions are necessary to this respect."

4. Even the terms of reference clearly proceeded on the premise that the petitioners were employed either with DDA or with MCD and only related to the legality of the transfer. Their employment was not in doubt at all. If the petitioners are employed payment of wages ought to have been made to them as a necessary incident of such services. It is indeed a shocking state of affairs that since 1998, the petitioners have not been paid wages by the DDA on the ground that their services already stood transferred along with the Rohini Scheme to MCD, and the MCD has also declined to make the payment on the ground that they stood transferred back to DDA. The MCD's stand is reflected in the office order dated 5th February, 1999 which reads as follows:-

"OFFICE ORDER

Under the orders of Additional Commissioner (HQ) dated 20.1.99, the following sewage Beldars who were transferred from DDA to MCD vide office order No. and dated shown against each, are hereby repatriated to the DDA with immediate effect, as they have given in writing to their respective Executive Engineers (CSE) that they will not work as Sewage Beldars for clearing and maintenance of Swears/Nallas:-

----- S.			
Name Of The	Office Order No.	Date Vide Which	Name Of The No. Sewage
Transferred To	Division Of Case	MCD Where At Present	Posted But Refused To
Work	-----	-----	-----
1. Sh. Ram Kishan s/o	E.O. No. 17	Dt. 11.2.98	Najafgarh Zone Sh. Raj Kumar
2. Shri Tuloo Ram s/o	E.O. No. 17	Dt. 11.2.98	Rohini Zone Sh. Baisakhi Ram
3. Shri Tak Chand S/o	E.O. No. 10	DT. 10.10.98	Rohini Zone Sh. Mammoo Lal
4. Sh. Shambhoo Pd. Singh	E.O. No. 10	DT. 10.10.98	Rohini Zone s/o Sh. Jai Narain Singh
5. Shri Dharam Pal S/o	E.O. No. 10	DT. 10.10.98	Narela Zone Sh. Nandoo Ram
6. Shri Surinder Pal S/o	E.O. No. 153	DT. 12.2.98	Narela Zone Sh. Ram Mehar
7. Shri Surender Kr. S/o	E.O. No. 19	DT. 11.2.98	Narela Zone Sh. Raghubir Singh
8. Shri Mewa Lal S/o	E.O. No. 19	DT. 11.2.98	Narela Zone Sh. Shiv Bax
9. Shri Jaswant Singh S/o	E.O. No. 19	DT. 11.2.98	Civil Line Zone Sh. Ram Pd.
10. Shri Prem chand s/o	E.O. No. 16	DT. 11.2.93	Rohini Zone Sh.

Sundra Singh 11. Shri Suresh Pal S/o E.O. No. 13 DT. 11.2.98 Narela Zone Sh. Ram

Phal

----- All
the Ex. Engineers (CSE) concerned are requested to relieve them to report back to the Executive Engineer, RPD 6/DDA for duty, under intimation to this office.

This issues for information and necessary action by all concerned."

5. Thus, the employees are sought to be shuttled between the two authorities, both of which are Government departments. The learned counsel for the MCD is not present inspire of service.

6. In view of this admitted position of the employment of the petitioners subject to dispute as to by whom they were employed, the application for interim relief was made in the Tribunal pending the determination leading to impugned order dated 4th August, 2003 which reads as follows:-

"4.8.2003

Present : Mohd. Farrukh Proxy for AR for W/M AR for Mgt. No. 2.

An application has been filed for grant of interim relief from the mgt. containing the averments on similar lines as made in the statement of claim on which issues had already framed.

Since, no affidavit has been filed by way of WE for which purpose, the case was fixed for today, the application is dismissed.

Date is sought for leading WE, To come up for WE on 17.9.2003. Mgt. has also filed list of documents along with documents.

Sd/-

PO IT 1

4.8.2003"

7. In my view the interim order is unreasoned and cannot be sustained at all. This is a case which cried out for interim relief because it was not in dispute that the petitioners are employed either by the DDA or MCD. The only dispute in the reference was whether the transfer to MCD by the DDA of the petitioners was valid. The two departments are battling about whose employees the petitioners are and in the process eleven employees have not been paid since 1998. It is not difficult to imagine the severe trauma undergone by employees who are in service and have not been paid wages since 1998. The impugned order thus, clearly shows non-application of mind. Accordingly, it is set aside. The MCD is directed to ensure that all arrears up to date in the post of beldars available to the petitioners similar to the similarly situated employees from 21st July, 1998 up to date, be paid to the petitioners within four weeks from today. The amount shall carry an interest @ 6% per annum. The M.C.D. shall also pay costs of this writ petition which in the shocking circumstances of this case are quantified at

Rs.10,000/- . The MCD will also continue to pay wages month to month on or before 7th day of every month. However, this is only an interim arrangement pending the determination of the dispute raised in the reference dated 9th January, 2002 for adjudication and depending upon the result of the adjudication. The incidence of the interim payment is to be apportioned/fastened. In case it is found that the transfer from DDA to the MCD was not valid then all the amount paid as per this interim order including interest thereon awarded today @ 6% p.a., shall be paid back to MCD by the DDA within four weeks of such demand being raised by MCD enclosing details of such payment. In case the transfer to MCD is upheld then this order will merge in the final award of the Industrial Tribunal.

8. The writ petition stands allowed and is disposed of accordingly.