
(2009) 02 DEL CK 0277

In the Delhi High Court

Case No : Writ Petition (C) No. 669 of 2009

Sheela Devi

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2009) 02 DEL CK 0277

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Amita Singh, for the Appellant; Sanjeev Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—By virtue of the present writ petition, the petitioner has challenged the award dated 1st August, 2003 passed by Sh. Lal Singh, Ld. Presiding Officer, Industrial Tribunal No. III rejecting the claim of the deceased petitioner Dil Bagh for regularization of his services by the respondent/management w.e.f 30th December, 1984 to the post of Mali.

2. I have heard the learned Counsel for the LRs of the deceased petitioner/workman on the question of admission and gone through the record. It is alleged in the petition that Dil Bagh initially joined Municipal Corporation of Delhi as a Beldar/Mali on 30th December, 1984. It is alleged that on 11th July, 1995 his services were terminated w.e.f. 1st January, 1992. A dispute was raised, as a consequence of which MCD reinstated him on 11th May, 1994. Another industrial dispute was raised by Late Sh. Dil Bagh in ID No. 83/1995 regarding payment of back wages and continuity of service from 1st January, 1992 to 11th May, 1994 which is alleged to have been decided in favour of the deceased/workman on 25th August, 2002. Further, it is alleged that during the pendency of the present ID No. 217/1997 the petitioner/workman, died as a consequence of which his

four legal heirs Smt. Sheila Devi his wife, Sh. Hans Raj son aged 16, daughter Miss Sunil aged 14 years and Anil his son aged 12 years were brought on record. After continuing with the adjudication of the dispute before the Ld. Labour Court regarding his regularization of the services of the deceased petitioner from 30th December, 1984, an award was passed on 1st August, 2003 by the learned Labour Court, dismissing the claim of the deceased/workman.

3. There is an inordinate delay and laches in filing the present writ petition against the impugned award dated 1st August, 2003. This is apparent from the fact that although the award was passed on 1st August, 2003 but the present writ petition has been filed after expiry of more than five and a half years.

4. The relief under Article 226 of the Constitution of India is a discretionary relief and there are catena of authorities that the Court does not entertain petition under Article 226 of the Constitution of India, if a person chooses to remain silent for a long and thereby give a reasonable belief in the mind of the opposite side, that he is not interested in claiming that relief, which has been refused by the forum below.

5. Judged on this parameter the delay of five years and ten months is not only inordinate delay but highly belated in invoking this discretioning of the High Court.

6. The petitioner along with the writ petition has filed an application u/s 5 of the Limitation Act trying to give a reason for the delay. The provisions of Limitation Act are not applicable to the writ petitions filed under Article 226 of the Constitution of India. No time limit has been laid down within which period of time the writ must be filed. What period of delay would be considered fatal would vary from case to case. It may vary from few months to even years. The Hon'ble Supreme Court in case titled State of M.P. v. Bhailal Bhai AIR 1964 SC 1006 had observed as under:

the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay is seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable.

7. As the provisions of Limitation Act are not applicable to the entertaining the writ petitions, therefore, no application u/s 5 of the Limitation Act seeking condonation of delay is entertainable. Even if the explanation which has been given by the LR's of the deceased petitioner/workman in the application seeking condonation of delay, is considered objectively even then the said explanation can hardly said to be a ground which would constitute "sufficient cause" to warrant the condonation of delay in filing of the writ before this Court. The

ground which has given is that after the impugned award was passed the petitioner applied to the respondent/management for appointment of the second son of the deceased petitioner/workman on compassionate ground. The date on which such an application was made has not been given but it is stated the said application was rejected on 17th January, 2008 and even from 17th January, 2008 if the period is reckoned the LR's of the deceased petitioner/workman have come to Court more than a year after to file the present writ petition. The other ground which has been stated is that the daughter of the deceased petitioner/workman is handicapped and the petitioner a widow herself is an illiterate lady and her elder son has gone missing.

8. I feel that these can hardly constitute a ground to entertain the writ petition which is otherwise highly belated. For the reasons mentioned above, I feel as there is an inordinate delay in filing the writ petition for quashing the award dated 1st August, 2003. Accordingly, the writ petition is dismissed.

9. No order as to costs.