

(2015) 04 DEL CK 0036

In the Delhi High Court

Case No : Writ Petition (C) 6372 of 2002

The Management of M.C.D.

APPELLANT

Vs

Praveen Kumar and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 3 JCC 1667

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Deepak Bhaskar for Shyel Trehan, for the Appellant; Rajiv Agarwal and Sachin Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—Vide the present writ petition, the petitioner has challenged the award dated 06.07.2001 whereby the learned Presiding Officer has held that the workman was entitled to be appointed on the post of computer operator w.e.f. 29th March, 95 in the proper pay-scale of computer operator and other consequential benefits and also awarded Rs. 1000/- towards cost of litigation.

2. The admitted facts of the present case are that respondent no. 1, Mr. Praveen Kumar, was working with the management. He joined the employment of the MCD in its Engineering Department at Division No. 25, Under Fly Over, Sewa Nagar, New Delhi on 15.04.88 as a Muster Roll Beldar.

3. Vide a Circular, the petitioner had invited the applications of the eligible candidates by 10.01.1994 for the post of Computer Operator having following qualifications:-

1. Having a degree of matriculation (10th) or equivalent from a recognized University/Board or Institution.

2. Good knowledge of Hindi and English Typing.

3. Certificate of Computer Operating.

4. The respondent no. 1 had applied for post of Computer Operator vide its application showing his educational qualification as under:-

(a) Matriculate from CBSE Delhi in the year 1983.

(b) Intermediate (10+2) with science subjects from the CNSE Delhi in the year 1985.

(c) B.Sc (Gen) (Phy, Chem, Math and Eng) from Meerut University in 1987.

(d) Diploma in Computer Science (Basic, Cobol and Dbase- III) from Vocational Training Centre Delhi.

(e) Knowing Hindi and English Typing.

5. The respondent no. 1 also disclosed that he was working in Division XXV Engineering Department of MCD since April 1988. Thereafter, vide the office order dated 24th\ November, 1995, the respondent no. 1 was called for trade test on 10.02.1995 at 2.00 pm at modernised Press, Civil Lines Zone, 16-Rajpur Road, Delhi. Respondent No. 1 vide order dated 02.03.95 was thereafter transferred and posted against vacant post of Computer Operator but when he went to join his duties, pursuant to a transfer order, he was asked to produce his relieving order of LDC and was not allowed to join at the post of Computer Operator for the reason that he could not produce the relieving order as LDC. The respondent No. 1 then raised the dispute and the matter was referred vide reference as under for adjudication.

"Whether denial of appointment on the part of Computer Operator to Sh.Praveen Kumar by the management w.e.f. 09.03.1995 is illegal and/or unjustified and if no, to what relief is he entitled and what directions are necessary in this regard?"

6. Before the learned Presiding Officer, the contentions of the petitioner were that the required qualifications for the post of computer operator was LDC and raised the preliminary objection that the claim was bad in law and liable to be dismissed since the workman i.e. respondent no. 1 did not possess the required qualification for the post of computer operator as he was working as Muster Roll Beldar.

7. The learned tribunal has dealt with both the contentions of the petitioner and after recording the evidences and on the basis of the evidences and the documents produced before it, reached to the conclusion that the circular, inviting application for the post of computer operator was silent about the LDC being the required qualification for the post of Computer Operator.

8. The learned tribunal has also observed that the respondent no. 1/the workman had nowhere mentioned in his application when applying for the post of computer operator that he was holding the post of LDC and also gave emphasis on the fact that he was found eligible for the post of computer operator and that

is why he was called for the trade-test.

9. It is also apparent that before the Labour Court, the petitioner had, during the trial, tried to prove that Praveen Kumar shown in the office order dated 2nd March, 95 and was transferred and posted in the vacant post of computer operator, was some other Praveen Kumar and not the respondent no. 1 by leading evidences although no such contention was raised in the written statement. Despite the fact that there was no pleading on the part of petitioner of the fact that the office order dated 2nd March, 1995 wherein two LDC's, one of which is shown as Praveen Kumar, did not relate to Praveen Kumar/claimant. The court had allowed the petitioner to lead evidences on these pleas and after considering all the evidences produced by the petitioner reached to the conclusion that this plea of the petitioner was false and had no merit and was self-contradictory and amounted to blowing hot and cold by the witness.

10. The court has observed as under:-

"13. The management examined Sh.P.K. Gupta, Controller, Printing Press as MW1, who stated that the workman applied for the post of Computer Operator with them and this post was sanctioned only for internal candidates who were working as LDCs with them. The workman had applied for the same, but he has never disclosed in the application that he was working as an LDC with them to fulfil the above conditions vide copy of application Ex.MW1/1. They did not give any offer of appointment or trade test etc to the workman for above reason. They have not yet declared the result of above post even till that day as the recruitment rules are not yet notified. They were not sanctioned as there is some difficulty regarding the pay scale. However, to do the work of Computer Operator they have transferred two LDCs vide Ex.MW1/2. The name of Praveen Kumar appearing in Ex.MW1/2 was for another Praveen Kumar and not the present workman as the present workman was working as muster roll Beldar while the above Praveen Kumar of Ex. MW1/2 was working as a LDC. It is pertinent to note here that this witness is deposing contrary to the documents issued by management itself and the management has not examined any other such Praveen Kumar to show that this document Ex.MW1/2 belongs to some other person. He has also not filed any other document to show that there was some other Praveen Kumar who was posted vide Ex.MW1/2. The management was in possession and control of such a material evidence, but the same has been withheld by the management was in possession and control of such a material evidence, but the same has been withheld by the management without any sufficient reason which could throw light on the material question of controversy. Therefore, it is presumed that management has no such evidence, and if at all it was there, this statement of Ex.MW1/2 cannot be believed that document Ex.MW1/2 belongs to another Praveen Kumar. This witness has deposed that they have not called this workman for any trade test or anything else contrary to the documents on record. Thus his testimony does not inspire any truth in this respect. He further deposed that they did not allow the workman to join as

Computer Operator as per the above transfer as he was not an LDC. They have told him to get the relieving order as an LDC and then approach them to join as Computer Operator. This version of this witness is like that he is blowing hot and cold in the same breath as earlier he was stating that this letter did not belong to workman and later on he stated that they called him to get the relieving letter as LDC."

11. It is this award which the petitioner has challenged before this court.

12. The plea before this court is that respondent no. 1 who is the daily rated/muster roll beldar that too in some other department of MCD, could not be appointed as a computer operator and that there was nothing on record to show that the respondent no. 1 was actually working as LDC. It is also argued that although applications were invited for the post of LDC but no results has so far been declared and none has selected. The office order dated 02.03.1995 was merely a transfer order and not the appointment order of the workman/respondent no. 1. It is further argued that the fact that the respondent no. 1 had failed to produce the relieving order from the earlier department as LDC shows that he had never worked as LDC. It is submitted that the award is perverse and contrary to a settled principle of law.

13. Reliance is also placed on the findings of the Supreme Court in the case of State of Haryana Vs. Surinder Kumar and others, AIR 1997 SC 2129 : (1997) 4 JT 82 : (1997) 3 SCALE 108 : (1997) 3 SCC 633 : (1997) SCC(L&S) 844 : (1997) 2 SCR 917 : (1997) AIRSCW 1980 : (1997) 3 Supreme 406 .

The Hon"ble Supreme Court has held as under:-

"Merely because the post held by daily rated workers and regular employees are inter changeable but still the daily rated workers do not undergo selection process of recruitment. Under these circumstances, the workman is not entitled for equal pay as was being drawn by regular ward boys during the period when he was treated as daily wager."

14. It is submitted that in view of this since he was simply a beldar, he could not have been appointed as a computer operator on regular basis. It is prayed that award be set aside.

15. The petition is contested by the respondent no. 1. It is submitted that the learned tribunal had, on the basis of the evidences led before it has given its findings. These are the findings of fact and cannot be challenged under Article 226 of the Constitution of India as this court does not sit as an appellate court and is prevented from re-appreciating the evidences.

16. Reliance is placed on the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 .

17. It is submitted that petition is liable to be dismissed.

18. I have heard the arguments and perused the relevant records. My findings

are as under:

19. Admittedly, there was a circular dated 22nd December, 1993 whereby the applications were invited for the post of computer operator. From the bare perusal of the circular, it is apparent that there was no such condition that only the LDCs could apply for the said post. It was an open invitation to all those persons who were having a degree of matriculation, good knowledge of Hindi and English Typing and a Certificate of Computer Operating. It is also an admitted fact that pursuant to the application of the respondent no. 1 to the said post, he was called for trade-test.

20. It is argued on behalf of the petitioner that the result has not been declared so far and no select list has been prepared, therefore, it cannot be said that the respondent no. 1 was a successful candidate. It is apparent from the pleadings and from the Statement of Claim before the tribunal that the petitioner is not claiming his right to the post of computer operator as a successful candidate. His claim had arisen when pursuant to the office order dated 2nd March, 95, he was not allowed to join at the transferred place at the post of Computer Operator in the office of C.P&S. His contention was that since he was found eligible for the post of Computer Operator and called for trade test and possessed all the required qualification (as per circular inviting application for said post) and subsequently transferred to man that post, he ought to have been allowed to join. He contested the said plea before the tribunal wherein the petitioner took the plea that the person shown as LDC in the transfer order 2nd March, 1995 was the some other person and not the respondent no. 1. The contention of the respondent no. 1 before the tribunal was that this transfer order was received by him and that although he had been shown as muster roll employee, he actually had been working as the LDC. The tribunal, on the basis of evidences, rejected the contention of the petitioner that Praveen Kumar shown as LDC in office order dated 2nd March, 1995 was some other and reached to the conclusion that the transfer order relates to the respondent no. 1/workman.

21. Now, the question is whether the finding of fact can be interfered with by this court in exercise of its jurisdiction under Article 226 of Constitution of India.

22. The jurisdiction of this court to issue a writ of certiorari is very limited. It can be done only when there is an error of law on the face of the award or where the award has been passed without any jurisdiction. The scope of the jurisdiction of the court under Article 226 and 227 of the Constitution of India has been discussed by the courts in several pronouncements. The Supreme Court delineated the scope of writ of certiorari in the following words in Syed Yakoob case (supra).

" This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it

may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

23. In the case of *Sadhu Ram Vs. Delhi Transport Corporation*, AIR 1984 SC 1467 : (1983) LabIC 1516 : (1983) 2 LLJ 383 : (1983) 2 SCALE 136 : (1983) 4 SCC 156 : (1983) 3 SCR 725 : (1983) 2 SLJ 372 , the Supreme Court has discussed the jurisdiction of this Court under Article 226 and has held as under:-

"We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals."

24. In *Harbans Lal Vs. Jagmohan Saran*, AIR 1986 SC 302 : (1985) 2 SCALE 891 : (1985) 4 SCC 333 : (1985) 3 SCR 634 Supp : (1986) 1 UJ 28 also, the Supreme Court has clearly held that in exercise of the jurisdiction under Article 226 and 227 of the Constitution, it is not open for the High Courts to re-appreciate the evidences on record and then give its findings. The Court has clearly held that "We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence."

25. The proposition of law therefore is very clear. In the cases where the admissible evidences are not considered or left out or where non-admissible evidences have been relied upon or undue emphasis have been given to extraneous considerations or where the findings are based on no-evidence, the findings of the fact can be interfered with but where the tribunal has based its findings on the evidences before it on the issues in dispute, it cannot be said that the tribunal exceeded its jurisdiction. In such cases, it is desired that the courts should be slow in interfering with the orders of the tribunal.

26. In the present case, the petitioner has failed to point out that the tribunal while reaching to the conclusion has relied on non-admissible evidences or has left out any material evidences from consideration or that the findings are based

on no-evidences.

27. The learned tribunal has considered all the aspects of the case and then reached to the conclusion that Praveen Kumar who was shown working as a LDC in the transfer order dated 2nd March, 1995 vide office order no. F.1/1 95-CED(C) 81 was the respondent no. 1. When the petitioner himself has treated the respondent as LDC and transferred him to the post of computer operator, refusal to allow him to join the said post, only on the ground that he had failed to obtain the relieving certificate of LDC is certainly high handedness of the department of the petitioner who had refused to issue the relieving order of the respondent no. 1 despite the fact that in the order dated 2nd March, 1995, he was shown as LDC. It seems that the respondent no. 1 has become a scape goat between different departments of the MCD. One department is treating him as an LDC and passing transfer order on that basis and the other refused to allow him to join the duties. It is apparent to mention here that while inviting the application to the post of computer operator, there was no eligibility criterion that the person must be working or posted as LDC. The petitioner has also failed to show any recruitment rules on record showing that the eligibility criterion for post of Computer Operator was LDC. In the absence of any such criterion, the insistence on the part of petitioner that only LDC could be appointed on the said post was inconsistent to its own earlier orders and stand.

28. There is no illegality in the award. The petition has no merit in it and the same is dismissed.

No order as to cost.