

Ram Kishan and ors. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-09-2005

Reported in : 118(2005)DLT29; 2005(80)DRJ729

Judge : Mukul Mudgal, J.

Appeal No. : WP(C) No. 1656-66/2004

Appellant : Ram Kishan and ors.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Arun Birbal, Adv. for respondent No. 1

Advocate for Pet/Ap. : Sanjoy Ghose and; Pragnya, Advs

Disposition : Petition allowed

Judgement :

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 Cse 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 Zones/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. Raghbir 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.

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