

Management of M.C.D. Vs. Shri Kamal Singh and anr.

Management of M.C.D. Vs. Shri Kamal Singh and anr.

SooperKanoon Citation : sooperkanoon.com/697403

Court : Delhi

Decided On : May-13-2003

Reported in : 109(2004)DLT386; 2004(73)DRJ712; 2004(2)SLJ380(Delhi)

Judge : Mukul Mudgal, J.

Appeal No. : CW 4312 of 1996 and CM 5408-09/2003

Appellant : Management of M.C.D.

Respondent : Shri Kamal Singh and anr.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Sarabjit Sharma, Adv

Disposition : Writ petition dismissed

Judgement :

Mukul Mudgal, J.

1. The application (CM No.5409/2003) is allowed subject to all just exceptions. Delay in filing the application, i.e., CM 5408/2003 for restoration of the writ petition stands condoned.

CM 5408/2003

2. The conduct of the Municipal Corporation of Delhi deserves censure and further demonstrates a callous indifference and cavalier disdain in the conduct of the proceedings and would have normally warranted dismissal of this application as being belated beyond repair. However, I have thought it fit to allow this application only with a view to consider the case on merits.

3. Application is allowed. The Order dated 19th April, 2001 is recalled and the writ petition stands restored at its original number.

4. CM stands disposed of.

CW 4312/96

5. The Award dated 12th February, 1996 passed by the Industrial Tribunal, under challenge is in respect of single workman. The dispute was referred to the Tribunal in 1987. The terms of reference are as under:

'Whether the workman Shri Kamal Singh should be treated as regular workman of MCD, Delhi and if so, from which date and what directions are necessary in this regard?'

6. By the impugned Award the Tribunal found as follows:

- a) It is established beyond doubt that the daily wagers are performing the same duties as performed by the regular employees.
- b) That documents on file show that the management in fact started such a scheme for absorbing daily basis workman as regular employees.
- c) As per circular No. LWD/HQ/95-4245 dated 25th August 1995 of the Corporation showing that all the employees working on daily wages for maintenance work/works of regular nature engaged during the period from 1st April 1988 to 31st March 1990 shall be regularized from 1st April 1995 in pursuance of the corporation's earlier resolution.
- d) That in spite of the opportunity given to the management to intimate the latest position regarding the scheme of regularization there has been no co operation by the different departments of the management of MCD.
- e) That the differential pay of daily wagers violates the principles of equal pay for equal work. Accordingly the Tribunal gave the following directions: 'It is, therefore, clear that Hon'ble Supreme Court in some cases has directed the payment of same charges to the daily wages from the date of their initial appointment but in some case from the date of reference and in some cases from a future date. Taking the middle course, I think it will be just and proper if a direction is issued to the management to make payment to the workman of minimum pay plus DA in the pay scale of regular employees without any increment in a comparable post w.e.f. Date of reference i.e. from 9.1.1987 till workman is regularized and I direct accordingly. The issue is decided accordingly and the Award is passed accordingly.'

7. On merits the learned counsel has unable to demonstrate how the above findings are vitiated on facts and/or in law. In my view the law laid down by the Hon'ble Supreme Court in Jeet Singh and Others Vs M.C.D. and Others : 1986 CriLJ869 to the effect that a daily wager should be entitled to the same salary and allowances on the same basis as regular employees has been correctly applied to the facts of the present case by the Industrial Tribunal. In fact the Tribunal has relied upon the judgment of the Hon'ble Supreme Court in Delhi Municipal Karamchhari Ekta Union (Regd.) Vs P.L. Singh & Others : [1988]2SCR174 to grant emoluments to the respondent No.1 with effect only from the date of reference and not from the date of employment with MCD. No fault can thus be found with the aforesaid directions and findings of the Tribunal which has only granted regularization in accordance with the MCD's own circular No. LWD/HQ/95-4245 dated 25th August 1995 and the scheme of the MCD..

8. Accordingly the writ petition is dismissed in liming.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com