

Rohtash Vs. M.C.D. and ors.

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Court : Delhi

Decided On : Aug-27-2004

Reported in : 2004(76)DRJ657

Judge : Manmohan Sarin, J.

Acts : Industrial Disputes Act

Appeal No. : W.P.(C). No. 8347/2002

Appellant : Rohtash

Respondent : M.C.D. and ors.

Advocate for Def. : S.C. Sharma, Adv.

Advocate for Pet/Ap. : Rishikesh, Adv

Judgement :

Manmohan Sarin, J.

1. Rule.

With the consent of parties writ petition is taken up for disposal.

2. The relevant facts, as urged by the counsel for the petitioner and relevant for disposal of this writ petition are being noticed:

3. Petitioner had worked during the year 1978 as a daily wager. Petitioner was working in what is known as BHC Anti Malaria Operation of Municipal Corporation of Delhi. It is stated that during the period 1980-86, petitioner was not working. He was re-engaged on 25.3.1986 and had worked up to 7.6.1986.

4. Petitioner has filed the present writ petition in December, 2002, seeking a direction to the respondent to include his name in the seniority list and regularize his services with all consequential benefits, in terms of the directions that had been given by a learned Single Judge of this Court in CM.4344/87 in W.P.(C).No.2698, vide order dated 18.1.1988. By the said order, a direction was given to the respondent to prepare a joint seniority list of workers/beldars. 'The basis of determining the seniority list was the date of their initial appointment. Length of service was to be counted in a manner that if the worker had even been employed for four months or five months in a year, and he had worked every year for the said period without break.'

5. From the foregoing, it would be seen that petitioner having not worked during the period 1980-86, could not lay a claim for seniority on the basis of initial work during the year 1978. Petitioner also did not avail of the benefit of filing objections to the seniority list, as published, or to the exclusion of his name from the seniority list.

6. Learned counsel for the respondent has objected to the maintainability of the writ petition on the ground that inclusion in seniority list is claimed without complying with the order passed in 1987. The same is sought to be asserted through a writ petition, filed belatedly in the year 2002. There is a delay of nearly 15 years in approaching this Court. Learned counsel for the respondent has also placed reliance on orders passed in W.P.(C).Nos.7135/2000 and 2038/2001 by two learned Single Judges of this Court, wherein relief sought was denied on account of delay and laches.

7. Learned counsel for the petitioner has drawn my attention to a recent judgment by a learned Single Judge of this Court in W.P.(C).No.263/2003, wherein the Court granted relief despite objection as to delay and laches being raised in a similar case. Paras 10 and 11 of the said judgment may be reproduced for facility of

reference:-

'10. Considering that the petitioner was a daily wager, he comes from a poor family and remained under the bona fide impression that his name would have been included in the seniority list, I am of the opinion that delay and laches should not prove so fatal for the petitioner that he gets nothing. Principle of delay and laches is that with passage of time, rights accrue to third party, which may not be upset. Indeed, if the petitioner is placed at the bottom of the seniority list, nobody's right would be upset. The Hon'ble Supreme Court in the judgment : (2000)ILLJ 1080 SC , Gurmail Singh Vs.Principal, Government College of Education held that where a dismissed employee takes recourse to proceedings under the Industrial Disputes Act, delay would not be so fatal as to disentitle him to any relief. No back wages would be paid for the period of delay. On facts, the employee who was dismissed in the year 1981, was held entitled to maintain an action in the year 1989. Similar view was expressed in the judgment reported as JT 2001 1 SC 118 State of West Bengal Vs.Sanjiv Roy.

I allow the writ petition. In that, directions are issued to the respondents to place the name of the petitioner at the bottom of the seniority list prepared by it pursuant to the directions of this Court on 17.12.1987 and confirmed on 18.1.1988. Petitioner would be entitled to regularization as and when his turn matures as per his entitlement in the seniority list, being placed at the bottom.'

8. I am in respectful agreement with the observations, as noted above, as regards delay, non-suited the petitioner. Mr.Rishikesh submits that petitioner does not lay a claim for being granted seniority either from 1978 or from 1986. He submits that petitioner be placed at the bottom of the seniority list. The prayer made is reasonable. The net effect of this would be that petitioner is not asserting his seniority over any other beldar or daily wager, who had worked continuously for period hitherto before. Petitioner having worked in the years 1978 and 1986 only claims that he be preferred to others, who had not worked at all. In these circumstances, delay and laches, in my view, would not defeat the claim sought to be asserted by the petitioner now. Accordingly a direction is issued to the respondent to place the petitioner at the bottom of the seniority list, prepared by it,

pursuant to the directions of this Court on 7.12.1987 and confirmed on 18.1.1988. Petitioner would be considered for regularization on his turn and as found eligible under the policy.

Writ petition stands disposed of in above terms.

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