

**Central Administrative Tribunal
Principal Bench**

OA No. 3495/2011

Order reserved on: 16.11.2016

Pronounced on: 21.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Gautam,
Son of Shri Mukanda,
New Delhi-110028.
R/o Hindi Park,
Dariya Ganj,
New Delhi-110002.

- Applicant

(By Advocate: Ms. Neelam Tiwari for Mr. Rajiv Aggarwal)

Versus

Municipal Corporation of Delhi
Through its Commissioner,
Municipal Corporation of Delhi,
4th floor, S.P.M.Civic Centre,
Minto Road,
New Delhi-110002.

- Respondents

(By Advocate: Ms. Punam Singh for Mr. Rajesh Singh)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant in this OA is seeking the following relief:

- “(i) Issue an appropriate order or direction thereby directing the Respondent/Management to pay the difference of salary of regular Beldar with retrospective effect i.e. w.e.f. 01.04.2000 with all consequential benefits (monetary as well as non-monetary)
- (ii) pass any such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in favour of the applicant;
- (iii) allow the present Application with cost, in favour of the Applicant.”

2. The applicant was initially engaged as Muster Roll Beldar on 26.05.1992 and was disengaged w.e.f. 26.08.1993. He raised an Industrial Dispute no.244/1995 in which the Labour Court vide Award dated 02.08.2003 ordered that the applicant was entitled for his reinstatement with continuity of service and full back wages. In another application filed by the applicant, the Labour Court vide Award dated 16.07.2009 held that the applicant was not entitled to regularisation from initial date of his appointment, i.e., 26.05.1992. The applicant approached Hon'ble High Court in WP (C) no.1872/2010 which was disposed of *in limine* on 18.03.2010, ordering the respondents to consider the case of the petitioner for his regularisation in terms of its policy for such regularisation treating him to have continued in service with effect from the date of his initial appointment as daily wager in view of the Award dated 02.08.2003. The applicant was reinstated in service w.e.f. 30.04.2007 as daily wager Beldar and was also paid full back wages in terms of Award dated 02.08.2003. The applicant filed a contempt petition in Hon'ble High Court on 06.06.2010 complaining non-compliance of the order with regard to regularisation. The respondents thereafter considered the regularisation of the applicant in terms of relevant policy and regularised his services w.e.f. 01.04.2000 vide order dated

24.11.2010. The contempt petition was dismissed by the High Court on 25.11.2010 with the following order:

“Counsel for the petitioner submits that the respondent has passed an office order dated 24th November, 2010. He submits that in view thereof, he does not wish to press the contempt petition, however, he seeks liberty to take recourse to such remedies as may be available to him in accordance with law. Accordingly, the contempt petition is dismissed as not pressed for.

Liberty as prayed for is granted.”

3. The applicant has already received the back wages as daily wager Beldar w.e.f. 26.08.1993 to 30.04.2007. His claim is now restricted to the difference of pay for the period from 01.04.2000 to 30.04.2007.

4. Learned counsel for the applicant submitted that it was inherent in the order of the Hon’ble High Court that the applicant should get all the consequential benefits once his services are regularised. The Award of the Labour Court dated 02.03.2003 had given the applicant not only continuity of service and other consequential benefits but also full back wages. The Hon’ble High Court had upheld the aforementioned Award of the Labour Court. It was, therefore, incumbent on the respondents to give him the difference of pay from the date he was regularised. Responding to the contention of the respondents in their counter invoking the principle of ‘no work no pay’, the learned counsel stated that in the present case the applicant was kept away from work because of the non-implementation of the Award of the Labour Court and

delay in regularisation in terms of the policy of the respondents. Relying on decision of this Tribunal in **Amar Pal and another vs. Municipal Corporation of Delhi**, OA No.3003/2009, learned counsel submitted that the applicant was entitled to similar treatment.

5. Learned counsel for the respondents, on the other hand, argued that the law with regard to back wages was well-settled that the applicant cannot be paid for the period in which he has not worked. In terms of the specific direction of the Labour Court, the respondents have already paid back wages for the post of daily wager Beldar after his reinstatement. However, there is no specific direction either by the Labour Court or by the Hon'ble High Court to pay the back wages from the date the applicant was regularised. He also pointed out that the Hon'ble High Court had taken note of the implementation of the direction in WP (C) No.667/2010 and dismissed the Contempt Petition on 25.11.2010.

6. We have considered the submissions made by the learned counsel for the parties and perused the record. The limited issue to be adjudicated is whether applicant is entitled for difference of pay from 01.04.2000, when he was regularised with retrospective effect, till 30.04.2007 when he was actually reinstated. It not in dispute that the applicant was reinstated with effect from 26.08

1993 in his original post of daily wager Beldar following the award of the Labour Court and the direction of the High Court in WP(C) 1872/10. The applicant has also been paid back wages for this period. But for the disengagement of the applicant in 1993, held to be illegal by the Labour Court, he would have been regularised in his own turn in terms of the policy of the respondents as is evident from the subsequent decision to regularise him from 01.04.2000 vide order dated 24.11.2010. It can be therefore, inferred that the applicant was prevented from working as regular Mali only because he was not in service due to his illegal disengagement. The 'no work no principal' has already been discarded in his case since he has been granted back wages for period he was not in service. Now the only question that remains is whether he should get it as daily wager Beldar or a regular Mali when he did not work in any of those posts during the period under reference.

7. In **J.N. Shrivastava v. Union of India, 1999 I LLJ 546 (S.C.)** after examining the legal position, the Supreme Court has held that principle of 'no work no pay' is not applicable when the employee is ready and willing to work, but the employer prevents him from doing his duties (i.e. work). The said principle cannot be applied to a case in which employee is kept away from duty or rendered ineligible by act or omission of employer.

8. In **State of Haryana v. Bani Singh Yadav**, 2005 LIC 1016 (P.&H.D.B.), the petitioner, after his release from Army was appointed in Civil Secretariat, Haryana. The benefits of his military service, which was denied initially, was granted to him later on by ante-dating his promotion. Denial of arrears of pay and allowances from the deemed date of his promotion, on the principle of 'no work no pay' was held to be improper.

9. The learned counsel for the applicant has sought parity with this Tribunal's order in OA No.3003/2009. However, it is noted that there was no specific direction in that order to pay back wages. Relevant portion of the order dated 23.04.2010 reads as under:

"6. Resultantly, OA is allowed. Respondent-MCD is directed to offer regular appointment to the applicants with all consequences in law w.e.f. 1.4.2005 on a group 'D' post as per its policy. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs."

10. In the present case applicant was granted back wages for the period from 26.08.1993 to 30.04.2007 in terms of the specific direction contained in Award dated 02.08.2003. The Hon'ble High Court had also directed only to consider regularisation of the applicant in terms of the policy of the respondents considering his employment from his initial date of appointment in the year 1992 and therefore dismissed the contempt petition after the respondents regularised the applicant. However, liberty was

granted to the applicant in the order of the High Court dated 25.11.2010 to take recourse to such remedies as may be available to him in accordance with law. Dismissal of the aforementioned contempt petition cannot be said to have nixed the claim of the applicant for back wages as argued by the learned counsel for the respondents.

11. In the background of the above facts and the law, we are of the view the applicant was kept away from working as regular Mali due to the acts of omission and commission of the respondents for which he cannot be held responsible. The 'no work no pay' principle cannot be applied for the purpose of giving difference of pay when he has already has been paid back wages in the post of daily wager Beldar, for the period he never worked.

12. OA is therefore allowed. The respondents shall pay the difference for pay for the period 01.04.2000 to 30.04.2007 within a period of 3 months from the date of receipt of a copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(V.N. Gaur)
Member (A)

'sd'

21st December, 2016