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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on : 29.08.2022
Pronounced on: 12 .09.2022*

+ **W.P.(C) 5746/2003**

BSES YAMUNA POWER LIMITEDPetitioner

Through: Mr. Sandeep Prabhakar, Mr.Amit
Kumar and Mr.Vikas Mehta,
Advocates.

versus

THE PRESIDING OFFICER & ANOTHER Respondents

Through: Mr. Jawahar Raja, Ms. Meghna De,
Ms. Varsha Sharma and
Ms.Moksha Sharma, Advocates for
respondent No. 2.

CORAM:

**HON'BLE MR. JUSTICE GAURANG KANTH
J U D G M E N T**

GAURANG KANTH, J.

1. The present petition has been filed under Article 226 of the Constitution of India for setting aside the Award dated 06.05.2002 passed by the Presiding Officer, Industrial Tribunal-III, Karkardooma, Delhi in I.D. No. 107/1995 titled as "*The management of M/s. Delhi Electric Supply Undertaking of the Municipal Corporation of Delhi v. Its workmen (Sh. Ramji Lal)*" (hereinafter referred to as "**Impugned Award**") whereby the services of Respondent No. 2 i.e., the workman, Ramji Lal, were regularised to the post of Mason Grade-I.

2. To mention, subject to the compliance of the requirements brought into effect by this Court vide order dated 08.09.2003, stay on the Impugned Award was granted.

3. The facts emanating from the record are that Respondent No. 2 was initially appointed as a worker on work-charge basis. Later, he was engaged as a Mason w.e.f. 24.03.1975. On 31.03.1976 his services were terminated, thereafter, he raised an industrial dispute vide I.D. No. 66/1983. The learned Labour Court vide an Award dated 31.05.1985 found Respondent No. 2 entitled to the relief of reinstatement and continuity in service with full back wages.

4. Pursuant to the abovementioned Award, Respondent No. 2 was reinstated into the services w.e.f. 29.04.1986. Thereafter, his services were regularised w.e.f. 12.06.1986 on the post of *Mazdoor* in the pay scale of Rs. 410/- to Rs. 580/-. The learned Tribunal vide the Impugned Award directed regularisation of the services of Respondent No. 2 on the post of Mason Grade-I w.e.f. 25.03.1977 in proper pay scale and allowances. It further directed the Petitioner to pay the arrears of difference of pay.

5. Aggrieved, Respondent No. 2 against his regularisation at the post of *Mazdoor* raised an industrial dispute. The Government of the National Capital Territory of Delhi vide Order dated 19.10.95 forwarded the reference to the Industrial Tribunal-III in I.D. No. 107/95 for adjudication which read as:

“Whether Sh. Ramji Lal is entitled to be regularised as Mason Grade-I and if so, from which date and to what relief is he entitled and what relief is he entitled and what direction are necessary in this regard?”

SUBMISSIONS ON BEHALF OF THE PETITIONER

6. Learned counsel on behalf of the Petitioner submitted that the policy of the erstwhile Delhi Electric Supply Undertaking (hereinafter referred to as “DESU”) was that any workman, who was appointed on daily-rated basis under Class IV Category, irrespective of the post, after completion of two years of continuous services has to be regularised on the regular strength of DESU at the post of *Mazdoor*, now designated as Assistant Lineman.

7. The learned Tribunal wrongly assumed that Respondent No. 2 was appointed as Mason initially. A workman is said to be appointed when he is brought on regular strength of the department. The learned Tribunal overlooked the fact that seniority is counted from the date when the workman is brought on regular strength.

8. He further asserted that for regularisation to the post of Mason Grade-I, under the law, a workman has to fulfil the required condition of the said post, and if he is not fulfilling the said conditions, he cannot be regularised or appointed to the said post. An appointment to any post is subject to the Recruitment Rules, and other conditions attached to the said post.

9. Since there was no such post of Mason Grade-I, no order/Award could have been passed by the learned Tribunal. Further, it is apparent from the Impugned Award that the post of the Assistant Mason is to be filled by direct recruitment. It was submitted that the workman was engaged for a specific project and was not working against a permanent nature of job.

10. Further, the learned Tribunal failed to appreciate the fact that as the post of Mason Grade-I is from the channel of direct recruitment, therefore, no person could be appointed on the basis of promotion or regularisation. The learned Tribunal injudiciously created a separate channel for recruitment for a post.

11. No order can be passed for appointment to the post *de hors* the departmental Regulations. Once there is an essential qualification prescribed, then the appointment can only be on the basis of the said conditions and qualification and not otherwise.

12. Lastly, learned counsel relied on *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.* reported as (2006) 4 SCC 1, to submit that when a person enters a temporary employment or gets engaged as a contractual or casual worker, he is aware of the consequences of the appointment being temporary, casual or contractual. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

13. *Per Contra*, learned counsel appearing on behalf of Respondent No. 2 contended that finding of fact given by the learned Tribunal is based on the material on record and there is no illegality or infirmity with the Impugned Award. By placing reliance on *Harbans Lal v. Jag Mohan* reported as (1985) 4 SCC 333, the counsel contended that the writ of certiorari may be issued only if the order of the inferior Tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of

the principles of natural justice or is vitiated by a manifest or apparent error of law.

14. Through *Sudhoo v. Haji Lal Mohd. Biri Works & Ors.* reported as (1990) 4 SCC 37, he argued that the High Court need not interfere with the findings reached by the prescribed authority after appreciation of evidence.

15. It was further submitted that the Petitioner had failed to produce any Recruitment Rules for the said post to establish its claim that Respondent No. 2 was not qualified for the said post as alleged. Learned counsel by citing *Bhagwati Prasad v. Delhi State Minerals Corporation* reported as (1990) 1 SCC 361, adduced his submission that lack of prescribed educational qualification would not come in the way of promotion of an employee who has rendered his services on the said post for a considerable amount of time. Therefore, an employee will be entitled to equal pay and allowances at par with persons appointed on regular basis or discharge similar duties.

16. Learned counsel vehemently argued that Respondent No. 2 should have been reinstated on the same post on which he was appointed before the termination of his services. However, the Petitioner had reinstated him on the post of *Mazdoor* which was lower in rank and pay scale and from where Respondent No. 2 can never get promoted to the post of Mason Grade-I.

17. Lastly, the post of *Mazdoor* is inferior to the post of Mason Grade-I. The post of Mason Grade-I holds higher pay scale and the appointment as a *Mazdoor*, which amounts to reversion, is a punishment without any rhyme or reason.

LEGAL ANALYSIS

18. The controversy in the present case pertains to whether the Petitioner was virtuous at regularising the services of Respondent No. 2 at the post of *Mazdoor* when he was previously working as a daily wager at the post of Mason Grade-I. Undisputedly, the post of the Mason Grade-I is saturated through direct recruitment, and that the pay scale of Mason is higher than the pay scale of *Mazdoor*.

19. It is vital to state that the High Court, while exercising its jurisdiction under Article 226, can interfere with the findings of the lower Court. It is trite in law that in a proceeding under Articles 226 and 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The present jurisdiction is supervisory and not appellate. The Hon'ble Supreme Court in *Shama Prashant Raje v. Ganpatrao & Ors.* reported as (2000) 7 SCC 522, held that on a mere perusal of the order of an inferior Tribunal, if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to a conclusion that on the basis of the material on record, it is not possible for a reasonable man to come to a conclusion arrived at by the Tribunal, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal.

20. It is settled law that a finding of fact based on no evidence would also be an error of law and as such amenable to such a writ. An error of law apparent on the face of the record can be corrected by a writ of certiorari. Thus, the High Court in all likelihood has the power to

adjudicate on the present issue and does not take on board the contention of the Respondent *qua* the powers of this court.

21. When on 31.03.1976, Respondent No. 2 was terminated he was rendering his services against the post of Mason as a daily wagger/work charge basis employee. His services were terminated after one year of his joining. After his reinstatement on 29.04.1986, his services were regularised on 12.06.1986, on which, he raised an industrial dispute vide the Impugned Award. The Petitioner as per the policy of the DESU regularised the services of Respondent No. 2 after his reinstatement. Ordinarily, services of Respondent No. 2 ought to have been regularised in 1977 since he joined in 1975, but his termination disrupted this course of action.

22. Respondent No. 2 in his Statement of Claim has admitted that he was being treated as a daily wagger/casual/muster roll worker and was being paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948 before his termination. Additionally, the learned Tribunal recorded statement of Assistant Personnel Officer, who deposed that the workman i.e., Respondent No. 2 was working as a 'Helper' with a Mason. The post of Mason is filled by the Management by way of direct recruitment as per their Notification. The learned Tribunal recorded the deposition as:

“MW1, Sh. P.D. Raniwal stated that there is no person junior to the workman who might have been regularised before him. The parties have entered into an Agreement regarding regularisation vide settlement Ex. MW1/1. As per the Agreement, a person is to be regularised after 2 years of his initial appointment. The workman was to be regularised on the post of Asstt. Line Man (Mazdoor). He was asking

them for his regularisation as mason which could not be done as he was not entitled to it. He works as a Helper with a Mason. The post of mason/Asstt. Mason is filled by them by way of direct recruitment as per their notification Ex. MW1/2. He is not appointment by promotion. Thus, the workman could not be regularised or appointed as a mason.”

23. Admittedly, as per the policy of DESU if any worker is working on daily wage/work charge basis is to be regularised after a period of two years at the post of *Mazdoor*, irrespective of the position at which he was working previously. The post of Mason is a different stream with different appointment qualifications altogether, and that is through direct recruitment and not regularisation of services. If any workman is willing to hold the position of Mason, he would have to go through the process of direct recruitment as and when the vacancy arises.

24. The learned Tribunal erroneously held that the workman was initially appointed on the post of Mason Grade-I, but his services were regularised on the post of *Mazdoor* which is lower in status and pay scale. The finding of the learned Tribunal that the workman under force was under-employed due to his educational qualifications and experience is unfounded to say the least. Further, this court certainly does not concur with the views of the learned Tribunal that the Petitioner had to comply with the principles of natural justice *qua* appointment to any post or regularisation of the services.

25. The policy of the department cannot be given a go-by. No appointment can be made without following the due process. A temporary official who is purely appointed on daily rated/work charge basis for

specific period to do a specific job, cannot claim to be a regular employee of an establishment and thus cannot claim seniority for the period of his service rendered on work charge basis.

26. In view of the aforementioned discussion and settled position of law, this court is of the considered opinion that the findings of the learned Tribunal are perverse and does not flow from the correct position of law. Thus, the Impugned Award is set aside.

27. The present writ petition is disposed of. There shall be no order as to costs.

SEPTEMBER 12, 2022

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GAURANG KANTH, J.

