

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II,
New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 131/2012

Date of Passing Award- 28th March, 2023.

Between:

The General Secretary.
Municipal Employees Union,
Aggarwal Bhawan, G.T. Road,
Tis Hazari, Delhi-110054

Claimant

Versus

The Commissioner,
Municipal Corporation of Delhi (MCD),
Civic Centre, Kamla Market,
New Delhi- 110002

Managements

Appearances:-

Sh. Rajiv Aggarwal, Ld. A/R for the Workman.
Sh. Harbansh Kaushal, Ld. A/R for the Management.

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The Commissioner, Municipal Corporation of Delhi (MCD and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/45/2012(IR(DU) dated 09/08/2012 to this tribunal for adjudication to the following effect';

“Whether the action of the management of Municipal Corporation of Delhi (MCD) in not promoting Sh. Surendra Pal Singh S/o Sh. Raj Pal Singh from the post of Malaria Beldar to the post of Asstt. Malaria Inspector and payment of difference thereof w.e.f. the date his junior Sh. Prem Singh S/o Sh. Girwar Singh get promoted w.e.f. 12.03.1991 is justified or not? If not what relief the workman is entitled to and from which date?”

As stated in the claim petition, the workman Surrender Pal had joined the management MCD as a Malaria Beldar in it's anti malaria Dept on 01.06.1984 and continued to work as such till 01.10.1985, when his service was illegally terminated,. Being aggrieved the claimant work man had raised an Industrial Dispute , which was registered as ID No 636/1992. The Labour court by Award dt 13/12/2002, held the order of termination by the management illegal. But no order for reinstatement or back wages was passed in that order as the labour court observed that the workman has already been reinstated by the order of the Hon'ble H C in connection with another matter. The claimant workman challenged the said award by filing WPC No 12827/2005. The Hon'ble HC of Delhi, in the said WPC, by order dt 28/10/2005, directed that the claimant shall be paid 25% of the back wages w. e. f. the date of his termination within six weeks of the date of the order. The said order was challenged by MCD in LPA No 319/2006. But the LPA was dismissed by order dt 09/11/2006. In the said order the Hon'ble court gave a direction to the management to reinstate in service on or before 15.12.2006, if not already been reinstated.

In compliance of the said direction of the Hon'ble court, the workman was assigned duty w. e. f. 15.12.2006 and back wages from the date of termination on 01/10/1985 to date of reinstatement on 14.12.2006 was paid @25% as directed by the Hon'ble court. An order to that effect was passed by the management on 15.12.2006. Thus the continuity of the service of the claimant was maintained by the orders passed by the Hon'ble High Court of Delhi and there was no break in his service.

The post of Assistant Malaria Inspector is the next promotional post in the hierarchy of the Malaria Beldars and carries a much higher pay scale than of Malaria Beldar. In the year 1991, one Shri Prem Singh, s/o Shri Girwar Singh, who was junior to the claimant being appointed on 02.04.1988, was given

promotion to the post of Asst Malaria Inspector by office order dt 08.03.1991. for the illegal termination of his service in the year 1985, he was deprived of the said promotion in spite of having the eligibility. After his reinstatement with continuity by the order of the Hon'ble High Court of Delhi, he claimed for promotion and served a demand notice dt 14/06/2010 in this regard, which was duly received by the Management. But his grievance was not redressed. Hence, he raised an Industrial Dispute before the conciliation officer, which ended in failure for the non co operation of the management and the appropriate Govt. referred the matter for adjudication in terms of the reference.

Management appeared and filed written statement stating that the workman had never served any demand notice on the management stating that an Industrial Dispute exists between the parties. On that ground and for want of espousal, the claim is not maintainable. It has further been pleaded that the claim is also not maintainable as the claimant does not possess the requisite qualification for the post of Asst Malaria Inspector as provided under the Recruitment Rules and promotional Regulations for the post of Asst Malaria Inspector. The claimant as admitted by him was appointed as Malaria Beldar in the year 1984 and worked for only 58 days i.e from 22/06/1984 to Nov 1984. Thereafter he worked with the management for 140 days i.e from April 1985 to Sept 1985. The workman was engaged as a seasonal Malaria Beldar for 4-6 months during the Transmission season only and was never appointed as a regular employee qualifying for the promotion to the post of Asst Malaria Inspector. The management has denied that a person junior to the workman was promoted w. e. f.13.03.1991. It has been explained that Prem Singh the person named by the claimant workman was a regular seasonal Malaria Beldar and got promotion to the post of Asst Malaria Inspector on 12.03.1991, where as the claimant was regularized in service only in the year 2006 as per court order. After that he was considered for promotion to the post of Superior Field Worker and then Asst Malaria Inspector in due course. He will be promoted as the Asst Malaria Inspector in due course on fulfilling the requisite qualification as provided under the existing Recruitment Rules. Hence management has prayed for dismissal of the claim.

The claimant filed rejoinder that Industrial Dispute was properly espoused and a copy of the espousal proceeding has been filed. It has been further stated that the workman was never

appointed as temporary seasonal Malaria Beldar. For the illegal termination of his service there was a break in service which was later on regularized by the order of the Hon'ble High Court. For no fault on his part, he was deprived of the promotion. He has denied the stand of the management that the work man is required to be promoted as a SFW first and then to the post of Asst Malaria Inspector.

On these rival pleadings the following issues were framed for adjudication.

ISSUES

- 1- whether the action of the Management of MCD in not promoting Surender Pal Singh from the post of Malaria Beldar to the post of Asst Malaria Inspector and payment of the difference thereof w. e. f. the date his junior Prem Singh was promoted i.e from 12.03.1991 is justified or not. If so effect.
- 2- To what relief the workman is entitled to and effect.

The claimant examined himself as WW1 and proved the documents marked in a series of Ext WW1/1 to WW1/25. The Gen Secretary of the Union of which the claimant is a member has been examined as WW2. He has proved the espousal by filing the document to that effect already marked as WW1/15.

On behalf of the management, the Deputy Health Officer Dr Ajay Kumar testified as MW 1. He also proved certain documents marked in a series of MW1/1 to MW1/3.

During course of argument the learned AR for the management submitted that the claim advanced by the claimant for promotion citing the case of Prem Singh is baseless as both of them do not stand in the same footing. More over the claimant was appointed as a regular employee in the year 2006, by the order of the Hon'ble High Court of Delhi. Thus he is to be governed as per the recruitment Rule in vogue then. He also argued that the claim is not maintainable for want of espousal and the claim has become infructuous as the claimant has already been promoted to the post of Asst Malaria Inspector which he accepted without any objection. The counter argument of the AR for the claimant is that the management being the employer, is in possession of all the relevant papers and the recruitment Rules and circular. The management, thus has to prove that the claimant was not appointed

in the year 1985 on regular basis or he was a seasonal temporary Malaria Beldar and was made regular in the year 2006, for the order of the Hon'ble High Court. Not only that the management has to prove that Prem Singh was a permanent seasonal Beldar appointed in 1988. He also argued that the evidence adduced by the claimant properly proves his claim. But management has failed to prove the stand taken in the WS.

Be it stated here that no issue has been framed on the maintainability of the proceeding on absence of espousal. On the contrary the claimant by examining WW2 and producing the document Ext WW1/15, has proved the espousal for raising the Industrial Dispute. Hence the only point that remains for decision is if the claim advanced by the claimant for his promotion with retrospective effect with consequential benefits is maintainable or not.

FINDINGS

The claimant has stated that he was appointed as a Malaria Beldar in the management on 01/06/1984 and his service was terminated illegally on 01.10.1985. His termination was held to be illegal by the award of the labour court passed in ID No 636/1992. But for the order passed by the Hon'ble HC of Delhi, he was reinstated in to service on 15.12.2006 and 25% of the back wage was given to him as arrear from the date of termination i.e 01/10/1985 to 14.12.2006. The claimant while deposing as WW1 has reiterated the same. It is also admitted that by the management that pursuant to the order passed by the Hon'ble H C in WPC No 12827/2005, the claimant was reinstated to service on 15.12 2006 with 25% back wages from the date of termination.

The claimant has asserted that the termination was held illegal and the management allowed him continuity of service from the date of the said illegal termination by allowing 25% back wages as directed by the HC. Hence he is entitled to all other consequential benefits including promotion to the post of Asst Malaria Inspector from the date on which his junior Prem Singh was promoted. The management has denied this assertion of the claimant on the ground that Prem Singh was not junior to the claimant as Prem Singh was appointed as a regular beldar, where as the claimant was appointed as a temporary seasonal malaria beldar. The witness Dr. Ajay Kumar examined by the management

has stated that the claimant does not stand on same footing with Prem Singh appointed as a regular Malaria Beldar. This statement of the witness stands contrary to the pleading in the WS where management has admitted that Prem Singh was appointed as a regular seasonal malaria beldar. The witness has tried to draw a line between the claimant and Prem Singh by saying that the claimant was a seasonal Malaria Beldar and Prem Singh was a regular seasonal malaria beldar. It has not been explained by the management what is the difference between seasonal Malaria Beldar and regular seasonal Malaria Beldar, when the word seasonal refers to the work done during a particular season and a person engaged for seasonal work, how can be treated as a regular employee.

On the contrary, the claimant, while deposing as a witness has filed the photocopy of the office order of the Management dt 11/05/1988 marked as Ext WW1/9, which is the appointment order of Prem Singh on 11/05/1988 as the Malaria Beldar on temporary basis. The management has admitted that the claimant was appointed as temporary Malaria Beldar on 01/06/1984 and he was granted back wages from 01/10/1985 to 14/12 2006 and reinstated in to service on 15.12.2006, which means the claimant was senior to Prem Singh on the basis of the date of appointment and his service continuity was maintained by the order of the court, though he was not in service for some time on account of his illegal termination. The other document filed by the claimant as Ext WW1/10 and WW1/12, which are the office order of the management giving promotion to Prem Singh and several others on 08/03/1991 from Malaria Beldar to Asst Malaria Inspector. WW1/11 is the joining letter dt 12 .03. 1991 of Prem Singh.

The management while explaining the situation has stated that for promotion to the post of Asst Malaria Inspector the requisite qualification is High School Certificate pass and Sanitary Inspector Diploma. The claimant was not possessing the requisite qualification. Hence he was not considered. MW1 who is the Deputy Health Officer of the Management has stated during cross examination that the claimant has been promoted to the post of Asst Malaria Inspector on 10/08/2017, when he acquired the requisite qualification. To support his contention, the copy of the Asst Malaria Inspector Recruitment Regulation 2009, which came in to force on 16 th Feb 2010 has been filed as Ext Mw 1/2. The witness added that for filling up the posts, 30% shall be considered

from the feeder cadre and the persons to be considered are the SFW worked for 11 years continuously in the grade pay of 800/- hence no illegality was meted out to the claimant.

But on behalf of the claimant argument was advanced that in the year 1991 when the junior of the claimant was promoted the regulation of 2009 was not in force and as per the earlier regulation, there was no prescribed qualification for the promotion to the post of Asst Malaria Inspector. The old regulation which was in force in the year 1991 has been filed by the claimant. As per the said notification dt 12.08.1985, which is with regard to the Recruitment and promotion to the post of Asst Malaria Inspector, no educational qualification has been prescribed for the in service candidates, where as matriculation pass was the requisite qualification for direct recruitment.

On careful perusal of the oral and documentary evidence filed by the parties, it is held that, had the claimant not been illegally terminated in the year 1985, he would have been considered for promotion in the year 1991, when the junior to him Prem Singh was promoted on 13.03.1991 as both the claimant and Prem Singh stand in the same footing. It is a fact to be noticed that the promotion order of Prem Singh marked as WW1/12, nowhere mentions the qualification of the persons promoted as the same was not a required criterion as per the Regulation for Promotion and Recruitment of Asst Malaria Inspector, notified on 12.08.1985. The Regulation of 2009 is not applicable to the claimant, as his service continuity was maintained from 1985 by the order of the High Court and he is eligible for promotion since 1991, but for the illegal termination in the year 1985. The stand of the management that the regulation 2009 is applicable to the claimant and he was ignored for lack of requisite qualification is not acceptable. Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimant. It is held that the decision of the management in not promoting the claimant Sh. Surender Pal Singh S/O Rajpal Singh to the post of Asst Malaria Inspector is illegal. It is directed that the management shall give promotion to the claimant to the post of Asst Malaria Inspector i.e. the date 12.03.1991, when his junior Sh. Prem Singh was promoted as Asst Malaria Inspector and grant him

the financial and all other service benefits attached to that post from the date of promotion. Since the claimant has been given promotion as SFW and Asst Malaria Inspector during the intervening period, the financial benefits allowed to him for such promotion shall be adjusted towards the financial benefits he is entitled to on account of promotion w. e. f. 12.03.1991. this direction shall be carried out by the management within three months from the date of publication of the award, failing which the financial benefit , the claimant is entitled to shall carry interest @ 6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
28rd March, 2023

Presiding Officer.
CGIT-cum-Labour Court.
28rd March, 2023