

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

+ **W.P.(C) No. 11592/2004**

% **Date of Decision: 14th December, 2009**

NEW DELHI MUNICIPAL COUNCIL PETITIONER

! Through: Mr. P.C. Sen, Advocate.

VERSUS

\$ BUDH RAMRESPONDENT

^ Through: Mr. Anuj Aggarwal Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The NDMC, in this writ petition directed against the respondent workman, seeks quashing of Warrant of Attachment dated 05.06.2004 and 02.07.2004 in the sum of Rs. 35,762/- issued by the Implementation Officer in execution of industrial award dated 07.01.2002 in I.D. No. 1720/1994 (Old I.D. No. 165/1992) in favour of workman.

Briefly stated the facts of the case relevant for the disposal of this writ petition are that the respondent workman holds an industrial award dated 07.01.2002 in his favour which direct his reinstatement with consequential benefits. This award in favour of the respondent workman is not in dispute between the parties. The respondent workman has already been reinstated in service by the petitioner NDMC pursuant to the industrial award in his favour.

The dispute between the parties is regarding the date of reinstatement of the respondent. As per the petitioner, the respondent

was reinstated in service w.e.f 11.11.2002 whereas according to the respondent, he was reinstated in service w.e.f. 10.12.2003. There is no dispute between the parties that the respondent workman has already been paid back wages for the period between the date of his termination, i.e., 01.09.1990 and 10.11.2002.

The Warrant of Attachment dated 05.06.2004 and 02.07.2004 in the sum of Rs. 35,762/- which is subject matter of challenge in the present writ petition represent the wages of the respondent workman for the period from 11.11.2002 till 09.12.2003.

According to the petitioner, since the respondent workman was reinstated in service on 11.11.2002, he was not entitled to wages which he sought to recover by way of impugned Warrant of Attachment. On the other hand, Mr. Anuj Aggarwal, learned counsel appearing on behalf of the respondent workman, has submitted that since the respondent workman was not allowed to resume duties till 10.12.2003, in terms of award dated 07.01.2002, he was entitled to wages for the period prior to the said date, i.e., 10.12.2003. It is submitted by him that since the respondent workman was denied wages for the period between 11.11.2002 till 09.12.2003, he had to take recourse to recovery of his wages for the said period through Warrant of Attachment issued by the Implementation officer.

Mr. P.C. Sen, learned counsel appearing on behalf of the petitioner, does not dispute that the respondent workman has not been paid wages for the period between 11.11.2002 and 09.12.2003. His argument is that since the respondent workman did not join duties even after submitting his joining report on 11.11.2002, he is not entitled to wages till the time he actually joined duties on 10.12.2003. Mr. Sen has contended that the respondent workman should not be allowed to take advantage of his own

wrong in not resuming duties after submitting the joining report on 11.11.2002.

On the other hand, Mr. Anuj Aggarwal, learned counsel appearing on behalf of the respondent workman, has vehemently argued that though after the industrial award was passed in favour of the workman, the respondent workman went for joining duties but he was not allowed to join duties by the management of the petitioner and, therefore, according to him, no fault can be found with his client in not joining the duties till he was actually permitted to join duties on 10.12.2003.

In order to appreciate the above rival arguments advanced by the counsel for the parties, it will be relevant to refer to four documents which are Annexures P-2 to P-5 at pages 18 to 21 of the Paper Book and the same are extracted below:

(Annexure P-2)

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NEW DELHI MUNICIPAL COUNCIL

PALIKA KENDRA : NEW DELHI

NO. SO(E)/6156/SA-II

Dated 11.11.2002

POSTING ORDER

In pursuance of the award dated 07.01.2002 passed by Labour Court No.IX I.D. No.1720/1994 and with the approval of the Secretary, NDMC Sh. Budh Ram S/o Sh Ram Saran Sharma is appointed as Helper on TMR basis with immediate effect and posted in PR Deptt. against Sh. Vijay Anand earlier promoted.

His joining report may be sent to the office for issuance of formal office order.

ASSISTANT SECRETARY (ESTT.)

Copy to:-

- | | |
|---|---|
| 1 | Dir (PR) |
| 2 | Sh. Budh Ram,
A-16/1, Gali Chetram,
Maujpur,
Shahdara, Delhi-53, |
| 3 | Concerned File. |
-
-

(Annexure P-3)

To,
The DIR. (PR),
IInd Floor, Palika Kendra,
NDMC,
New Delhi

Subject:- JOINING REPORT

Sir,

In compliance of the award passed by Shri M.K. Gupta, Presiding Officer, Labour Court No. IX, Delhi in ID No.1720/94 (Old Number 165/1992). I submit by joining report and offer myself for duties.

Vide your office order No. SO(E)/6156/SA-II dated 11.11.2002, you have stated that you are joining me as Helper on TMR (Temporary Muster Roll). The said appointment as TMR is contrary to the directions passed by the Labour Court in the said award. The Labour Court has directed that I should be reinstated in service with full back wages and continuity. Without prejudice to my rights and contentions and right to challenge the said terms of your Office Order, I am submitting my joining report.

It is, therefore, requested that I may be allowed to resume my duties in terms of the directions of the award.

Thanking you,

Yours faithfully,

(BUDH RAM)
S/o Sh. Ram Sharan Sharma
A-16/1, Gali Chetram,
Maujpur,
Shahdara, Delhi-53,

Delhi
Dated:

Note:- I personally came along with my Joining Report but the same was refused by the Dir (PR), so I am sending it by registered AD post. I may be intimate the place of my joining and I am willing to join my duties.

(Annexure P-4)

To,
The DIR. (PR),
IInd Floor, Palika Kendra,
NDMC,
New Delhi

Subject:- JOINING REPORT

Sir,

In compliance of your letter No. SO(E)/6156/SA-II dated 11.11.2002,, I hereby submit my joining report and offer myself for duties. I may be allowed to resume duties with immediate effect.

(BUDH RAM)

S/o Sh. Ram Sharan Sharma
A-16/1, Gali Chetram,
Maujpur,
Shahdara, Delhi-53,

Copy to:
Assistant Secretary (Estt.)

Encl:
Letter dated 11.11.2002 issued by your goodself.

(Annexure P-5)

**NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI**

NO. SO(E)/2810/SA-II

Dated 03.12.2003

POSTING ORDER

In pursuance of the award dated 07.01.2002 passed by Labour Court No.IX I.D. No.1720/1994 and with the approval of the Secretary, NDMC Sh. Budh Ram S/o Sh Ram Saran Sharma is appointed as TMR basis with immediate effect and posted in CPH against Sh.Ami Chand, retired.

His joining report may be sent to the office for issuance of formal office order.

Sd./
ASSISTANT SECRETARY (ESTT.)

Copy to:-

- 1 MS (CPH)
- 2 Sh. Budh Ram,
A-16/1, Gali Chetram,
Maujpur,
Shahdara, Delhi-53,
- 3 Concerned File."

A perusal of the above documents would reveal that the petitioner had offered reinstatement to the respondent workman pursuant to industrial award dated 07.01.2002 in his favour vide office order dated 11.11.2002. The respondent workman immediately thereafter submitted his joining report which is Annexure P-3. There is a note on the bottom of the said joining report by the respondent workman, according to which, he was not allowed to join duties by the DIR (PR) and for that reason, he sent his joining report by Registered A.D. post making it clear that he is willing to join his duties at any place that may be intimated to him by the

petitioner. Thereafter, the respondent workman did not receive any communication from the petitioner to join duties. However, the respondent workman gave his joining report again on 17.11.2003 (Annexure P-4 at Page 20 of the Paper Book). It is pursuant to the said joining report given by the respondent workman, the petitioner posted him on duty vide posting order dated 03.12.2003 and in compliance thereto, the respondent workman joined duties with the petitioner management w.e.f. 10.12.2003.

In case, the respondent workman was deliberately not joining the duties after submitting his joining report in November 2002, then the first available opportunity for the petitioner to bring out the said fact was when it gave posting order to the respondent workman on 03.12.2003 pursuant to his joining report dated 17.11.2003. The posting order given by the petitioner to the respondent workman on 03.12.2003 (Annexure P-5 at Page 21 of the Paper Book) is completely silent about the default on the part of the respondent workman in not joining duties prior to 10.12.2003. Hence, no fault can be found with the workman in not joining the duties with the petitioner prior to 10.12.2003 and for that reason, he cannot be denied wages prior to the said date because the industrial award in his favour has awarded him benefit of reinstatement with all consequential benefits. This Court is, therefore, of the considered opinion that the respondent workman is entitled for wages even for the period from 11.11.2002 till 09.12.2003 amounting to Rs. 35,762/- covered by the impugned Warrant of Attachment.

In view of the foregoing, I do not find any merit in this writ petition, which fails and is hereby dismissed.

The petitioner is stated to have deposited Rs. 35,762/- being the amount covered by the impugned Warrant of Attachment in the Registry

pursuant to Court order dated 20.07.2004. This amount along with interest accrued thereon, if any, be released by the Registry in favour of the respondent workman forthwith.

DECEMBER 14, 2009
'bsr'

S.N.AGGARWAL, J