North Delhi Municipal Corporation vs Vandana & Ors on 29 January, 2021

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6128/2017 and CM Nos.25462/2017, 11964/2018, 16326/2019, 14131/2020 & 34133/2020

NORTH DELHI MUNICIPAL CORPORATION .....Petit
Through : Mr. R.V. Sinha, Standing Counse
with Mr. Amit Sinha, and Ms.
Sharanya Sinha, Advs. for North
MCD.
versus

VANDANA & ORS .
Through : Mr. Sanjoy Ghose, Ad
23.
Mr. Naushad Ahmed Kh
Ms. Manisha Chauhan,
GNCTD/R-24.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 29.01.2021 [Court hearing convened via video-conferencing on account of COVID-19]

1. This is an application filed on behalf of respondent nos. 1 to 6, 11, 17 to 19 and 21 to 23.

1.1. Via this application, the said respondents seek directions in terms of Section 17B of the Industrial Disputes Act, 1947 [in short „I.D. Act]. In the alternative, the applicants/respondents have asked, in effect, for grant of subsistence allowance of Rs. 25, 000/- per month qua each one of them.

2. On notice being issued, in this application, on the previous date of hearing i.e. 22.12.2020, a reply has been filed on behalf of the petitioner- corporation.

2.1. I have heard Mr. Sanjoy Ghose, who appears on behalf of applicants/respondents, and Mr. R.V. Sinha, who appears on behalf of the petitioner-corporation.

2.2. Mr. Sinha has opposed this application on three grounds:

> 2.3 Firstly, that a similar application i.e. CM Appl. No. 8588/2018 was moved by the respondents when this Court, instead of issuing any orders in the said application, indicated that the main matter would be heard on merits and, consequently, the writ petition was admitted.
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> 2.4. Secondly, Section 17B of the I.D. Act cannot come to the aid of the applicants/respondents in view of the fact that no award has been passed directing the reinstatement of the applicants/respondents. 2.5. Thirdly, that this is not a case in which the applicants/respondents should be given any relief by the Court, in the exercise of its powers, under Article 226 of the Constitution. In this context, it is submitted that the petitioner-corporation has already, in consonance with its contractual rights, disengaged the services of the applicants/respondents. 2.6. On the other hand, Mr. Ghose has argued that the impugned award dated 05.05.2017 concerns the issue of regularization. It is contended that since the applicants/respondents, at the relevant point, stood engaged with the petitioner-corporation for performing the functions of an Auxiliary Nurse Midwife (ANM) they were seeking, only, regularization at that stage. 2.7. Furthermore, Mr. Ghose submits that just prior to the passing of the impugned award, the petitioner-corporation, to deflate the spirit of the applicants/respondents, disengaged them from service, via office order dated 27.04.2017; an aspect qua which course correction was made by the petitioner-corporation via another office order dated 26.05.2017. 2.8. Based on the aforesaid office order dated 26.05.2017, Mr. Ghose sought to demonstrate that the applicants/respondents were taken back into service, albeit, for a period of six months.
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> 3. According to Mr. Ghose, the petitioner-corporation, in the present writ petition, which got listed for the first time, before the Court, on 21.07.2017, obtained, inter alia, on that date, for itself, a protective order which restrained the applicants/respondents from taking any coercive measures against it, albeit, till the next date of hearing.

3.1. Mr. Ghose says that this order has continued up-until now to the detriment of the applicants/respondents. It is Mr. Ghose s submission that while the petitioner-corporation stands protected, the applicants/respondents have been, in a manner speech, left high and dry.

4. I have heard learned counsels for the parties at some length. What is not disputed by Mr. Sinha is the issuance of the office order dated 26.05.2017. A perusal of the said order shows that the petitioner- corporation had taken the applicants/respondents back into service, albeit, for a period of six months. This position is not disputed by Mr. Sinha. 4.1 However, it is Mr. Sinha s contention that the petitioner-corporation, after the institution of the present writ petition, in consonance with its contractual rights, disengaged the applicants/respondents from service. 4.2 This has led to the applicants/respondents being put in a tough spot. 4.3. On one hand, for one reason or another, the

Court has not been able to hear the matter, finally. On the other hand, because the petitioner-corporation took the extreme step of disengaging the applicants/respondents from its service, after having re-engaged them, they are left in a state of penury.

4.4. Even today, the matter has reached for hearing after 4:30 P.M. It is not feasible, at this juncture, for this Court to; finally, adjudicate upon the matter, in quick time, given the present state of its board.

5. Given this position, in my view, the better course of action would be to grant interim relief to the applicants/respondents. But before I do so, let me deal with the objections raised by Mr. Sinha.

5.1. The first objection concerns the effect of the order dated 25.04.2018. In my view, the said interim order was passed by the court, at a stage, when the Court was hopeful that a final adjudication in the writ petition would take place in the near future. Since then, more than two years have passed and the Court, for one reason or other, has not been able to pass a final order in the writ petition. Inability of the Court to hear the matter finally cannot be the reason to deny the applicants/respondents even the barest interim relief when there are mouths to be fed and families to be looked after. There is no authority for the proposition that interim orders cannot be varied. Besides this, a perusal of the prayer clause of CM Appl. No. 8588/2018 would show that the relief sought was for restoration of status quo ante during the pendency of the writ petition with all consequential benefits including payment of arrears of salary/wages. The relief sought was much larger than what is, now, sought for by the applicants/respondents. 5.2 Therefore, this objection raised by Mr. Sinha does not find favour with me and is, accordingly, rejected.

5.3. The second objection taken by Mr. Sinha is that Section 17B of the I.D. Act cannot be brought into play for granting interim relief. Mr. Sinha, on a literal reading of the language of Section 17B of the I.D. Act, appears to be correct, in articulating this submission, only to the extent that the subsequent event of disengaging the applicants/respondents has the potentiality of disrupting the impugned award which concerns the issue pertaining to regularisation. The interim order, which the petitioner- corporation has obtained, only protects it from being subjected to coercive action but does not efface the impugned award; an aspect which will be examined at the stage of final adjudication of the writ petition. Therefore, for Mr. Sinha to say that there is no award in existence and, thus, Section 17B of the I.D. Act will not kick in, may not be quite accurate. 5.4. That being said, I am in agreement with Mr. Ghose that this Court, under Article 226 of the Constitution can, and if I may say so, ought to, grant interim relief in such like matters. In this behalf, the observations made by the Supreme Court in Dena Bank vs. Kiritikumar T. Patel, (1999) 2 SCC 106 : 1999 SCC (L&S) 466, being apposite, are extracted hereafter.

> "23. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being

> set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. [1987 Lab IC 1468 : (1987) 2 LLJ 210 : (1987) 1 LLN 695] that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution."

[Also see: Observations made in the Judgement dated 28.04.20061, passed in CM No. 48/2005, filed in W.P. (C) No. 2211/1998, titled Food Craft Instt. vs. Rameshwar Sharma & Anr.] 5.5. Besides this, it would be relevant to also allude to the powers exercisable by the writ court, under Article 226 of the Constitution, as elucidated by the Supreme Court, in B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749 : AIR 1996 SC 484.

> "23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court.

> "51. I may also notice that often applications are filed by the workmen seeking entitlement to wages under the provisions of Section 17B of the Industrial Disputes Act wherein a prayer is made for award of wages on the basis of the minimum wages notified by the authorities from time to time and also their grant with effect from the date of the passing of the award. I have noticed the authoritative pronouncements by the Apex Court to the effect that this court while exercising jurisdiction under Article 226 of the Constitution of India is empowered, to grant as an interim measure, wages on such terms which may be beyond the parameters laid down by the provisions of Section 17B of the Industrial Disputes Act."

Of course, this power is not as wide as which this Court has under

> Article 142. That, however, is a different matter."

5.6. Most of the applicants/respondents have put in at least 16 years of service. Some of them, I am told, have put in service ranging between 8 to 12 years. Therefore, given the circumstances, when, practically, the applicants/respondents are bereft of any wherewithal, especially, in the present times, when there are literally no jobs available, it would be appropriate for this Court, in my view, to exercise powers, vested in it under Article 226 of the Constitution.

6. Given the aforesaid position, I am inclined to direct the petitioner- corporation to pay to the applicants/respondents, wages, based on the parameters provided under Section 17B of the I.D. Act, albeit, in exercise of powers conferred on this Court under Article 226 of the Constitution. 6.1. The obligation to pay the wages, as directed above, will, however, commence from the date of this order.

6.2. Needless to add, the payments in terms of the aforementioned order will be made to the applicants/respondents on or before 7th day of each month.

6.3. I may also add that in case the petitioner-corporation were to call upon the applicants/respondents to join work, they will do so, unhesitatingly. However, the petitioner-corporation will give the applicants/respondents at least three days notice, in writing, on their last known address or, in the alternative, via their counsel-on-record.

7. The captioned application is, accordingly, disposed of in the aforesaid terms.

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8. It is already 5:00 P.M.

9. List the matter on 17.03.2021, albeit, at the end of the supplementary list.

RAJIV SHAKDHER, J JANUARY 29, 2021 aj Click here to check corrigendum, if any