

North Delhi Municipal Corporation vs Karam Singh & Anr on 14 July, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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SINGH NAYAL
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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 8832/2020 & CM APPLs. 28455/2020, 28456/2020,
29708/2020 & 29709/2020
NORTH DELHI MUNICIPAL CORPORATION ... Petitioner
Through: Ms. Namrat Mukim, Standing
Counsel.
versus
KARAM SINGH & ANR. Respondents
Through: Ms. Meghna De, Advocate.
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+ W.P.(C) 10285/2020
SH KARAM SINGH Petitioner
Through: Ms. Meghna De, Advocate.
versus
THE LABOUR COMMISSIONER & ORS. Respondents
Through: Ms. Namrat Mukim, Standing
Counsel.
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+ W.P.(C) 4803/2021
KARAM SINGH, CHOWKIDAR Petitioner
Through: Ms. Meghna De, Advocate.
Versus
NORTH DELHI MUNICIPAL CORPORATION, THROUGH ITS
COMMISSIONER (NORTH) Respondent
Through: Mr. Gaurang Kanth, CGSC with Mr.
Aditya Dhingra, Advocate for R-1.
CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 14.07.2021

1. This hearing has been done through video conferencing.

2. These are three petitions filed challenging award dated 12th September, 2017 passed by the Industrial Tribunal. By the impugned award, Digitally Signed By:DINESH SINGH NAYAL Signing

Date:16.07.2021 17:18:24 the workman i.e., Mr. Karam Singh has been reinstated with continuity of service and 50% back wages.

3. The workman was working as a chowkidar since 1994 and his services were terminated in 2005. Vide the impugned award, the Industrial Tribunal has directed regularization of his services in a phased manner as per the Management's regularization policy and the workman has also been awarded reinstatement along with 50% back wages and continuity of service.

4. W.P.(C) 8832/2020 was initially filed by the North Delhi Municipal Corporation (`NrDMC') challenging the award, on 26th November, 2018. However, the same was returned under objections. The petition was subsequently re-filed and there is an application which has been filed for condonation of delay in refiling of the petition, being CM APPL. 28456/2020 in W.P.(C) 8832/2020. The reason for delay given by the Corporation is that the entire record was not available with the Corporation and hence, it took time for the objections to be removed. Further, the Officer in charge was stated to be suffering from a major illness. It is also stated that there was a bifurcation of the two zones of Nr.DMC, which resulted in delay in finding the records. In compliance with order dated 28th January, 2021, an additional affidavit has also been filed in respect of the movement of the files among the departments of the Corporation. For all these reasons, condonation of delay in refiling is prayed for.

5. The submission of Ms. Meghna De, ld. Counsel appearing for the workman is that the delay is too long as more than four years have passed. The matter was first listed before this Court on 9th November, 2020 regarding an award which was passed on 12th September, 2017. She submits Digitally Signed By:DINESH SINGH NAYAL Signing Date:16.07.2021 17:18:24 that the delay is vague and not explainable, even by the chart which has been filed by the Corporation. The Corporation is bound to explain the delay on a day-to-day basis. Secondly, she submits that the impugned award has already been partially implemented and after the filing of the complaint under Section 2 (ra) of the Industrial Disputes Act, 1947, the writ raising the challenge, was filed by the Corporation. She submits that the settled legal position is that such undue delay cannot be condoned. She relies on the following three judgments:

1. Shri Ramesh Singh v. South Delhi Municipal Corporation [W.P. (C) 4197/2021 decided on 27.05.2021]

2. Ajay Kumar & Ors. v. Killburn Office Automation Ltd. [W.P. (C) 7930 decided on 27.03.2009]

3. State of Gujarat & Ors. v. Deep Association [SLP (C) Diary No. 15924/2020 Order dt. 13.01.2021]

6. Along with W.P.(C) 8832/2020, two further writ petitions have been filed by the workman. One being, W.P.(C) 10285/2020 wherein the prayer is for directing a decision to be taken in the complaint dated 25th September, 2018 filed by the workman under Section 29 and 2 (ra) read with Item Number 13 of the Fifth Schedule of the Industrial Disputes Act, 1947, in respect of unfair

labour practice and for implementation of the impugned award. The second writ petition, being W.P.(C) 4803/2021 has also been filed by the workman seeking the setting aside of the impugned award to the extent that it awards only 50% of the back wages as against the full back wages sought by the workman.

7. The Corporation is praying for setting aside of the reinstatement and payment of back wages on various grounds. The workman is praying for Digitally Signed By:DINESH SINGH NAYAL Signing Date:16.07.2021 17:18:24 payment of full back wages. The record of this Court shows that W.P.(C) 8832/2020 was first filed on 26th November, 2018. The three petitions in effect relate to the same award and challenges in respect thereof. One petition seeks implementation of the award, the other two petitions seek setting aside of the award, to the extent it grants partial relief to the workman. All these issues would have to be adjudicated together since there are common issues which are raised relating to the same workman and the same impugned award.

8. The law on condonation of delay in re-filing is well settled. A ld. Single Judge of this Court in Narender Kumar Sharma v. Maharana Pratap Educational Center, 2018 SCC OnLine Del 13146 has captured the legal position as under:

"8. It is settled legal position that delay in re-filing has to be considered on a different footing. Reference in this context may be had to the judgment of the Division Bench of this court in S.R. Kulkarni v. Birla VXL Ltd., 1998 (3) RCR (Civil) 436 where the court held as follows:--

"8. Notwithstanding which of the aforesaid Rules are applicable, the question of condonation of delay in re-filing of an application has to be considered from a different angle and viewpoint as compared to consideration of condensation of delay in initial filing. The delay in re-filing is not subject to the rigorous tests which are usually applied in excusing the delay in a petition filed under Section 5 of the Limitation Act (See Indian Statistical Institute v. Associated Builders, (1978) 1 SCC 483 : AIR 1978 SC

335. In the present case, the initial delay of 7 days in filing the application for leave to Digitally Signed By:DINESH SINGH NAYAL Signing Date:16.07.2021 17:18:24 defend stood condoned and that has not been challenged by any of the parties. It is no doubt true that the counsel for the appellant had not been very diligent after filing of application for leave to defend on 19th August, 1995 as counsel did not check whether the application was lying in the Registry with any objection or not. Considering however, the nature of the objections, it was a matter of removal of the objections by the counsel and on the facts of the present case, it is difficult in this case to attribute any negligence to the party. On the facts of the case, the effect of negligence or 'casual approach', which would be appropriate term to be used here, of the counsel on his client, does not deserve to be so rigorous so as to deny condensation of delay in re-filing the application. The casual approach of the counsel is evident as no timely efforts were made firstly to find out after filing application on

19th August, 1995 as to whether the Registry had raised any objection or not. Secondly, despite order of the Joint Registrar dated 9th January, 1996, the objection was removed only on 4th March, 1996 i.e. after the date which the Joint Registrar had fixed for the application being posted for hearing before the Court. When the application was refiled on 4th March, 1996, one would expect the person filing to be more careful thereby not giving an opportunity to the Registry to raise any other objection. But that was not so. The result was that the second objection was raised which, as noticed above, was removed on 21st March, 1996 but application was refiled only on 27th March, 1996. Apart from this casual approach, we do not find any mala fide intention on the part of the appellant to delay the proceedings. When there is negligence or casual approach in a matter like Digitally Signed By:DINESH SINGH NAYAL Signing Date:16.07.2021 17:18:24 this in re-filing of an application, though the court may not be powerless to reject an application seeking condonation and may decline to condone the delay but at the same time, passing of any other appropriate order including imposition of cost can be considered by the court to compensate the other party from delay which may occur on account of re-filing of the application."

9. Similarly, the Supreme Court in *Indian Statistical Institute v. Associate Builders*, (1978) 1 SCC 483 : AIR 1978 SC 335 held as follows:--

"10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation. If the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the High Court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to Digitally Signed By:DINESH SINGH NAYAL Signing Date:16.07.2021 17:18:24 misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be re-presented."

9. It is thus clear that the rigorous tests of condonation of delay per se in filing are not applicable in the case of condonation of delay in re-filing. Considering that there are three petitions challenging or relating to the same award and the workman himself has challenged the award after a period of four years, delay in re-filing by the NrDMC, deserves to be condoned. Accordingly, subject to payment of Rs.10,000/- to Id. Counsel for the workman within a period of four weeks, the delay in re-filing is condoned. CM APPL. 28456/2020 is disposed of.

10. W.P.(C) 4803/2021 which has been filed challenging the impugned award dated 12th September, 2017 by which the Industrial Tribunal has granted reinstatement along with 50% back wages and other consequential benefits to the workman. The workman has challenged the award and is praying for full back wages. Issue notice in this petition.

11. Notice is accepted by Ms. Mukim, Id. Counsel. Counter Affidavit be filed within a period of four weeks. Rejoinder be filed within four weeks thereafter.

12. List all three writ petitions on 6th October, 2021.

13. Interim orders to continue.

PRATHIBA M. SINGH, J.

JULY 14, 2021/Rahul/AD/T