

(2011) 05 DEL CK 0263

Delhi High Court

Case No: Writ Petition (C) 203 of 2011

Mukesh Kumar Bhardwaj

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision: May 11, 2011

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Anuj Aggarwal, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The writ petition impugns the award dated 22nd September, 2011 on the following reference:

Whether the services of Sh. Mukesh Kumar Bhardwaj S/o Late Sh. Mahabir Singh Bhardwaj have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?

against the Petitioner workman.

2. The Petitioner in his claim petition before the Industrial Adjudicator in pursuance to the reference aforesaid pleaded that, he joined the employment of the Respondent MCD with effect from 14th October, 1997 as a Chowkidar; that he was initially assigned the job in the Municipal Primary School, Sangam Park-I, Civil Lines, Delhi and thereafter in Municipal Primary School, Kamla Nagar, Civil Lines, Delhi from 1st January, 1998 and he continued to work there till 15th July, 1999; that he was treated as a daily rated/casual/muster roll worker and was being paid minimum wages; that his services were terminated with effect from 17th July, 1999 on the allegation that he had forged and fabricated the signatures of the Appointing Authority. It was the case of the Petitioner that the work being taken from him was

of a regular and permanent nature and the Respondent MCD was indulging in unfair labour practice in depriving the Petitioner of the status, salary and privileges of a regular employee; that he was terminated without any charge sheet or inquiry; that he had completed more than 240 days of continuous employment prior to illegal termination and could not be thrown out of employment in the manner done.

3. The Respondent MCD in its written statement/reply before the Industrial Adjudicator pleaded that the Petitioner had succeeded to get engagement as a daily wager Chowkidar in the Respondent MCD on the basis of forged and fabricated engagement letter of the Education Department; that an Education Committee/Screening Committee was constituted to examine the authenticity of the appointments of such daily wage employees as it had come to the notice of the Respondent MCD that many such persons were working in MCD Schools on the basis of forged and fabricated appointment letters by manipulating the records of Respondent MCD; that the Petitioner was also found to be one such person and accordingly his services were disengaged vide Officer Order dated 7th July, 1999. It was thus the case of the Respondent MCD that the engagement of the Petitioner being ab initio void and the Petitioner having never been engaged or appointed by the Respondent MCD, there was no employer-employee relationship and the claim of the Petitioner was misconceived. It was further pleaded that the Petitioner had suppressed the said facts.

4. The parties led their evidence before the Industrial Adjudicator. The Industrial Adjudicator on the basis of record before him held:

(i) that though according to the Petitioner also his services were terminated on 15th July, 1999 but the dispute was raised after 8 years, only in the year 2007 and hence the claim of the Petitioner was bad for laches and acquiesce.

(ii) that for any appointment in the Government Department there are Rules and Regulations of appointment; that none of the procedure had been adopted in the matter of appointment of the Petitioner; that the appointment of the Petitioner was thus an irregular appointment and such illegality could not be regularized.

(iii) that it stood proved that the engagement of the Petitioner was on the basis of a fake appointment letter of Rest Reliever post.

(iv) that even on the date of the alleged appointment, the Petitioner had crossed the age limit for appointment and there could have been no appointment beyond the age limit.

The Industrial Adjudicator thus held that the question of termination did not arise since the appointment was based on forged and fabricated documents and also for the reason that the Petitioner was not eligible for the post since he was, on the date of the appointment claimed by him, over age.

5. The Petitioner in the writ petition preferred before this Court also has not given any explanation whatsoever for the delay from the date of termination i.e. 15th July, 1999 till 12th November, 2005 when the Petitioner claims to have got issued a demand notice for the first time. Though the Petitioner has not given any date of applying to the Labour Commissioner but it appears that the application in that regard was made only in the year 2006 or 2007 inasmuch as the reference of dispute to the Industrial Adjudicator came to be made only on 26th June, 2007.

6. The plea of the Petitioner is that the termination of employment of the Petitioner being for the reason of the Petitioner having forged and fabricated the documents, was stigmatic and no in house investigation/inquiry having been conducted, was bad.

7. The writ petition came up first before this Court on 2nd May, 2011 when also the counsel for the Petitioner contended that the Industrial Adjudicator ought to have decided the reference in favour of the Petitioner for the reason of the termination being without any inquiry whatsoever. It was put to the counsel for the Petitioner whether the forgery which the Industrial Adjudicator had found, the Petitioner to have committed, would not vitiate the appointment itself, making the same nonest and resultantly there being no need for termination. It was also put to the counsel that the opportunity for leading evidence having been given before the Industrial Adjudicator, whether the grievance of inquiry having not been conducted prior to termination survived. The counsel for the Petitioner had then sought time to address on the matter.

8. The counsel for the Petitioner has today handed over the list of documents along with documents filed by the Petitioner before the Industrial Adjudicator. The same are taken on record. Attention is invited to the Office Order dated 24th December, 1997 recording the number of working days of the Petitioner and the payment. The same however in my view would be irrelevant. The question for consideration is that if initial engagement is on the basis of forged and fabricated documents, whether the Respondent MCD was required to hold a departmental inquiry and even if it was so required, evidence in this regard having been led before the Industrial Adjudicator, whether the termination/disengagement can be now set aside for the reason of inquiry having not been conducted.

9. The counsel for the Petitioner has also invited attention to the judgment of the Division Bench of this Court in [Soran Singh Vs. Union of India \(UOI\) and Others](#), in that case the Railways had dispensed with the workman upon detection by the Vigilance Branch of his employment on the basis of bogus or forged casual labour card and without giving any opportunity to the workman to furnish explanation. However, in that case the Railways failed to adduce any evidence before the Industrial Adjudicator also, of the service card of the workman in that case being fake or forged and it was thus held that the termination was illegal. The said judgment is thus not applicable to the facts in the present case where the Industrial

Adjudicator on the basis of the evidence led before him has returned a finding of the appointment of the Petitioner herein being on the basis of fabricated documents. The said finding of the Industrial Adjudicator is a finding of fact and not to be ordinarily disturbed in exercise of powers of judicial review unless shown to be perverse or unreasonable or based on no evidence whatsoever.

10. The counsel for the Petitioner has also invited attention to the judgment of the Apex Court in [Punjab State Electricity Board and Others Vs. Leela Singh](#), ; in my view, the said judgment also would not apply. Though the termination in that case also was on the allegation of forgery of documents of appointment and without any departmental inquiry but the same came to be challenged by way of a writ petition in the High Court and it was in the said context that it was held that without inquiry and giving an opportunity, action could not have been taken. In the present case as aforesaid, the inquiry in this regard has been held before the Industrial Adjudicator and who has returned a finding of fact of forgery and fabrication of documents and over age against the Petitioner.

11. Else, this Court in [Shri Virender Singh Vs. The Presiding Officer and Another](#), held that appointment on the basis of fraud is no appointment in the eyes of law. Reliance was placed on [R. Vishwanatha Pillai Vs. State of Kerala and Others](#), laying down that the right to salary and pension flows from a valid and legal appointment and if the appointment is not legal and valid or has been obtained fraudulently and rested on a false Caste Certificate, no such benefits can be awarded. It was yet further held that a person who entered the service by producing a false Caste Certificate and obtained appointment to the post meant for a Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of the Court. Reference was also made to [Ram Saran Vs. I.G. of Police, CRPF and Others](#), also laying down that no leniency can be shown to a person who has obtained appointment on the basis of forged documents, otherwise it shall amount to giving premium to a person who committed forgery. Similarly, in [Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others](#), it was held that an appointment which is contrary to the statute/statutory rules is void in law. Mention may also be made of the recent judgment in [State of Orissa and Another Vs. Mamata Mohanty](#), laying down generally that an order bad in its inception does not get sanctified at a later stage and a subsequent action/development cannot validate an action which was not lawful at its inception for the reason that illegality strikes at the root of the order. It was further held that it would be ironic to permit a person to rely upon a law in violation of which he has obtained the benefits and if an order at the initial stage is bad in law then all further proceedings consequent thereto will be nonest and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

12. The counsel for the Petitioner has next argued that the finding of the Industrial Adjudicator is perverse. I have perused the evidence by way of Examination-in-Chief and the Cross-Examination of the Petitioner and of the witnesses of the Respondent MCD. In fact the said evidence reveals that a proper inquiry was conducted qua 105 employees, detected by the Screening Committee to have been appointed on the basis of forged documents and it was on the basis thereof only that the action was taken. It is also borne out that an FIR in this regard was also lodged and prosecution is underway.

13. The counsel for the Petitioner has urged that the onus was on the Respondent MCD to prove forgery and fabrication and which has not been done and thus the finding of the Industrial Adjudicator is perverse. In my view, the onus of proving that the documents of appointment were genuine and bona fide was on the Petitioner, Respondent MCD could not have been called upon to prove in the negative. It was for the Petitioner to prove that the documents on the basis whereof he claimed appointment, were issued by the competent officers of the Respondent MCD and in the normal course of the performance of their duties. Nothing of the sort has been proved by the Petitioner.

14. The delay of 8 years on the part of the Petitioner in raising the dispute is also in my opinion fatal to the case and sufficient for this Court to on this ground alone refuse to exercise jurisdiction. The Petitioner, when the matter appears to have been hot, chose to lie low and is found to have raised the dispute only by way of wager. It is settled position in law that the delay in raising the dispute is sufficient for this Court to refuse to exercise discretion in the matter.

15. There is no merit in the writ petition; the same is dismissed. No order as to costs.