

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1649 OF 2015
(Arising out of SLP(C) No.18379 of 2013)

NORTH DELHI MUNICIPAL CORP. ...Appellant

Versus

KRISHAN KUMAR ...Respondent

ORDER

Leave granted.

This appeal arises out of an order dated 5th March, 2013 passed by the High Court of Delhi whereby Writ Petition Civil No.1455 of 2013 filed by the appellant-Corporation has been dismissed and order dated 4th April, 2011 passed by the Central Administrative Tribunal affirmed.

When the matter initially came up before us on 26th August, 2013 it was argued on behalf of the appellant-Corporation that according to the records available with the Corporation, the respondent was employed for the first time as a daily-wager in February 1993 and not on 2nd April, 1991 as held by the Central Administrative Tribunal. It

was contended that the claim for regularization of services with effect from 2nd April, 1991 was based on an interpolation of the Muster Roll in which in place of one Smt. Krishna w/o Mr. Dhare (Pyyare) the name of the respondent was substituted. On behalf of the respondent, it was on the other hand argued that the respondent had been appointed on 26th February, 1991. Reliance in support of that contention was placed upon a statement prepared in June 2002 and signed by the Asst. Chief Accountant as also the Record Keeper of the Corporation suggesting that the respondent had been appointed under Muster Roll No.58360 and Voucher No.175/SK dated 2nd April, 1991.

In the light of the rival claims made before us, we had directed the appellant-Corporation to file an additional affidavit to support its version that no appointment under the above-mentioned Muster Roll or voucher was ever made in favour of the respondent and also to produce the original Muster Roll and the Voucher book for the perusal of the Court. The appellant-Corporation was further directed to state on oath whether anyone by the name Smt. Krishna w/o Dhare (Pyyare) was ever employed and if so, under what

Muster Roll and voucher and whether Krishna had been regularized in service of the Corporation.

In compliance with the above direction, the appellant-Corporation has filed an additional affidavit sworn by one Smt. Padma Jaiswal, IAS. The affidavit *inter alia* states that Muster Roll No.58360 and Voucher No.175/SK dated 2nd April, 1991, have been tampered so as to show the first date of engagement of the respondent to be 26th February, 1991 instead of 26th February, 1993. In the Muster Roll Bill of February 1991 also there is some over-writing/tampering against the name of Smt. Krishna w/of Shri Dhare and the name of Krishan Kumar s/o Shri Chet Ram has been wrongly entered. In the subsequent Muster Rolls however the name of Krishna has been mentioned by the Zonal Authority. The affidavit goes on to say that the matter is being investigated by the Vigilance Department to bring to book the erring officials responsible for the mischief. The affidavit further states that Muster Roll of 2nd April, 1991 does not show the address of respondent Krishan Kumar but of Smt. Krishna w/o Shri Dhare meaning thereby that the name of the respondent has been inserted

by interpolation. Not only that the Muster Roll carries a thumb impression of the safai karamchari instead of signature of the respondent who has signed the Muster Rolls at other places instead of affixing his thumb impression. The address of the respondent is also different from that mentioned in the forged Muster Roll No.58360 and Voucher No.175/SK dated 2nd April, 1991.

It was on the basis of the above affidavit and the relevant record placed before us for perusal argued by learned counsel for the appellant-Corporation that the Central Administrative Tribunal and so also the High Court fell in error in holding that the respondent had been engaged on 2nd April, 1991 and was therefore entitled to be regularized with effect from the date.

On behalf of the respondent, it was on the other hand contended that the record sought to be produced at this stage was never available before the Central Administrative Tribunal or before the High Court and that the question of fact sought to be raised being a disputed question cannot be agitated in the present proceedings for the first time.

The only question raised and at some length argued

before us by learned counsel for the parties relates to the date of engagement of the respondent. It is evident from the rival contentions urged by the learned counsel for the parties that there is a serious dispute as to the actual date of engagement of the respondent apart from allegations of interpolations allegedly made by the respondent with the help of some other official of the Corporation. The fact that the matter is being investigated by the Vigilance Department of the Corporation separately only lends credence to the existence of the dispute. There is at the same time no denying the fact that the issue is being raised for the first time before us. But since the same goes to the root of the matter, we see no reason to shut out the same from consideration. The better course in our view is to remit the matter back to the Central Administrative Tribunal to give an opportunity to both the parties to place their respective versions before it so that the Tribunal after hearing both sides determines the question afresh in accordance with law.

In the result, we allow this appeal set aside the order passed by the High Court as also that passed by the Central Administrative Tribunal and remand the matter back to the

Central Administrative Tribunal for a fresh determination in accordance with law. We make it clear that we have expressed no final opinion on the merits of the controversy.

No costs.

.....J.
(T.S.THAKUR)

.....J.
(ADARSH KUMAR GOEL)

**New Delhi,
February 6, 2015.**

ITEM NO.36

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 18379/2013

(Arising out of impugned final judgment and order dated 05/03/2013 in WP No. 1455/2013 passed by the High Court Of Delhi At New Delhi)

NORTH DELHI MUNICIPAL CORP.

Petitioner(s)

VERSUS

KRISHAN KUMAR

Respondent(s)

(with interim relief and office report)

Date : 06/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s) Mr. Ajay Bansal, Adv.
Mr. Praveen Swarup, Adv.

For Respondent(s) Mr. Ajay Veer Pundir, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Dipankar Das, Adv.
Mr. Devesh Singh, Adv.
Ms. Anu Gupta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, this appeal is allowed:

"In the result, we allow this appeal set aside the order passed by the High Court as also that passed by the Central Administrative Tribunal and remand the matter back to the Central Administrative Tribunal for a fresh determination in accordance with law. We make it clear that we have expressed no final opinion on the merits of the controversy. No costs."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)