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

*Judgment delivered on: 25<sup>th</sup> August, 2014*

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**W.P.(C) No.5022/2012**

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Represented by: Mr.Arun Bhardwaj, Standing  
Counsel.

Versus

PREM SHANKAR SAXENA

..... Respondent

Represented by: Mr.P.N.Dwivedi, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. Vide the instant petition, the petitioner seeks quashing of the impugned award dated 01.04.2011 passed in ID No.78/2005 (Old ID No.99/98). Further seeks directions to quash the impugned order dated 07.06.2003, on issue No.5, passed by P.O. IT-III in ID No.99/98. Also seeks directions to quash the impugned order dated 29.03.2006, whereby the application filed by the petitioner seeking permission to lead additional evidence was dismissed.

2. Mr. Arun Bhardwaj, learned standing counsel appearing on behalf of the petitioner submits that earlier the learned Labour Court passed the

award dated 17.01.2007 against the workman and in favour of the petitioner. Hence, the respondent workman approached this Court vide WP(C) No.4113/2008.

3. Further submits, vide order dated 23.03.2010, while deciding the aforementioned writ petition, this Court remanded back the case to the learned Labour Court to decide the reference afresh after taking into consideration the demand notice dated 14.05.1997, which had been proved on record as Ex. WW1/16.

4. Contention of the petitioner is that thereafter, the learned Labour Court had to decide the reference afresh after taking into consideration the aforesaid demand notice in question, as directed by this Court.

5. In paragraphs 5 and 6 of the impugned award dated 01.04.2011, the learned Labour Court recorded as under:-

*“5. On the basis of pleadings of the parties, following issues were framed by Ld.Predecessor on 18.5.99:-*

*(1) As per terms of reference.*

*(2) Whether the claim is barred under section 2(j) and 2(s) of the I.D. Act as alleged? (OPM)*

*(3) Whether a proper demand notice has been served? OPW*

*(4) Whether the claim is not maintainable for the reasons stated in para 3 of the preliminary objections of WS?*

*6. On 2.11.99 on the request of workman, following issue no. 5 was framed:-*

*“Whether the management has held a legal and valid inquiry, as per rules of natural justice? OPM”*

6. Mr.Bhardwaj, submits that pursuant to directions passed by this

Court vide order dated 23.03.2010, the learned Labour Court was supposed to decide the reference afresh, however, while passing the impugned award dated 01.04.2011, the learned Labour Court had taken into considerations the issues, which were framed by its Predecessors on 18.05.1999 and 02.11.1999 respectively.

7. I note, vide order dated 23.03.2010, this Court observed that the learned Labour Court had ignored the demand notice dated 14.05.1997, proved on record as Ex.WW1/16, whereby the respondent workman had raised the demand against his illegal compulsory retirement from service and accordingly, remanded back the matter to the Labour Court to decide the reference afresh after taking into consideration the said demand notice.

8. Perusal of the issues framed on 18.05.1999 reveals that issue No.3 was that “Whether a proper demand notice has been served? OPW”.

9. While adjudicating the reference on demand notice, if the learned Labour Court has taken into consideration the issues already framed, in my considered opinion, the issue would have been remained same as framed vide aforesaid order dated 18.05.1999 because the other issues were not in dispute except issue No. 3.

10. However, the fact remains that demand notice dated 14.05.1997, Ex.WW1/16 was already on record and the learned Labour Court had, inadvertently, ignored the same. Therefore, if the learned Labour Court came to the conclusion that the issues are to be decided in favour of the respondent workman and ordered accordingly vide impugned award dated 01.04.2011, then I find no discrepancy in the aforesaid order.

11. Finding no merits in the instant petition, the same is accordingly dismissed with no order as to costs.

**SURESH KAIT  
(JUDGE)**

**AUGUST 25, 2014**  
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