

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

+ **W.P(C) No.12418/2006**

% **Date of decision: 28.02.2008**

Executive Engineer Petitioner
Through: Mr.Sewa Ram, Advocate.

Versus

Khumb Raj and Ors Respondents
Through : Mr.Varun Prasad, Advocate.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, Municipal Corporation of Delhi has impugned the award dated 15th July, 2004 holding that the action of the management in terminating the services of the respondent is not just, proper and legal and reinstating the respondent with 50% back wages in the scale of Rs.750-940/-.

2. The respondent was engaged as a beldar on muster roll with effect from 7th June, 1985. He continued working on daily wages upto 18th August, 1992. The petitioner leveled the charges of misbehavior against the respondent and issued a show cause notice on 17th August, 1992. The reply was filed by the respondent on 18th August, 1992 at 2 PM, however, the petitioner terminated his services with effect from 18th August, 1992 by order dated 18th August, 1992 without considering the explanation rendered by the respondent and without conducting any enquiry against the alleged mis-behavior of the respondent.

3. The workman challenged his termination order and the appropriate Government referred the following dispute to the Industrial Tribunal Cum Labor Court:-

“Whether the action of the management of Executive Engineer, Construction Division VII, CPWD, New Delhi in terminating the services of Sh.Khumb Raj Beldar w.e.f. 18.8.92 is proper, legal and justified? If not, to what relief, the workman is entitled?”

4. The respondent had challenged his termination order as illegal, unjust and having passed in violation of principles of natural justice and without complying with provisions contained in Industrial Disputes Act. The respondent also asserted that persons junior to him have been retained by the management and their services have been regularized in the time scale of Rs.750-940 and in the circumstances the respondent

sought reinstatement with full back wages, continuity in service and all consequential benefits.

5. The petitioner contested the claim and filed a reply to the claim petition of the respondent. It was asserted on behalf of management/petitioner that the place of workman was at Chanakyapuri, however, he was found at Bihar Bhawan on 8th August, 1992 in drunken condition and came to the office of the AE at about 11.30 AM and demanded Rs.500/- and on refusal he manhandled and misbehaved with Sh.V.K.Bansal, Junior Engineer who was on duty and thereafter, ran away from the office.

6. The respondent workman was issued a show cause notice on 14th August, 1992, the service of which was allegedly avoided by the respondent workman. However, the show cause notice was ultimately received by him on 17th August, 1992 and a reply was filed on 18th August, 1992. In the reply filed by the petitioner in para 8, the petitioner rather contended that no reply was received on 18th August, 1992 and reply was received only on 19th August, 1992 after the formal order of termination was communicated to the respondent and a copy of the communication was annexed at Annexure IV. The petitioner also contended that the reply relied on by the respondent is forged and the alleged reply was also filed after he was discharged on 18th August, 1992.

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1992. The petitioner categorically contended that the petitioner was discharged from service on account of misbehavior by the competent authority and for coming to the office of the Junior Engineer in drunken condition.

7. After considering the pleadings and evidence of the parties the Industrial Cum Labour Court held that the discharge order of the respondent is not an order of discharge simplicitor but it is penal in nature and, therefore, a regular enquiry as per law should have been initiated against him for giving him adequate and proper opportunity. The Court held that the reply of the respondent ought to have been considered and in the circumstances, there has not been any fair and reasonable opportunity to the respondent and consequently the action of the petitioner is not just, legal and deserves to be set aside. The Industrial Cum Labour Court also relied on the claim of the respondent that he has not been gainfully employed and the petitioner did not show or establish that the respondent was gainfully employed since 18th August, 1992 when his services were terminated and in the circumstances also awarded 50% of the back wages to the respondent from 18th August, 1992.

8. I have heard the learned counsel for the parties and have perused the award and the evidence. In reply to the claim of the respondent, it was contended on behalf of petitioner that the respondent was generally found in a drunken condition and used to misbehave and he continued drinking during working hours and thus he had been committing misconduct. Regarding the incident on 8th August, 1992, it was pleaded that the respondent was found drunk and he deliberately misbehaved and manhandled Shri Bansal, Junior Engineer, and after that he ran away from the spot. Regarding show cause notice dated 11th August, 1992, it was stated that it was served on 17th August, 1992 as earlier respondent had refused to take delivery of show cause notice for which a reminder was sent to him on 14th August, 1992. Regarding the reply to the show cause notice, the petitioner pleaded that the reply was received on 19th August, 1992 after the formal order of termination was passed and communicated to him. According to the petitioner, sufficient and appropriate time from 11th August, 1992 to 18th August, 1992 was given to him and, therefore, the services of the respondent has been rightly terminated. Regarding the applicability of Section 25 F of the I.D Act, the respondent asserted that the respondent was discharged on account of disciplinary action taken against him and his case is not of retrenchment and as per Section 2(oo) of the Act, retrenchment means termination by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of

disciplinary action and therefore no notice pay or any compensation was accruable to him.

9. In the deposition filed on behalf of the petitioner of Shri B.N. Mandal, Assistant Engineer, rather deposed that reply of the workman was received on 19th August, 1992 whereas termination order was issued on 18th August, 1992. Respondent, however, deposed that the notice to show cause was served by Shri Babu Lal, Assistant Engineer V, on 17th August, 1992. Perusal of the copy of the reply filed, however, shows that the reply was received by the petitioner on 18th August, 1992 at 2.00 PM.

10. The respondent has also filed a counter affidavit dated 7th May, 2007 contending that the reply was sent on 19th August, 1992. A copy of the reply dated 18th August, 1992 to the letter No.12(5)AE/V/EE/CDVII/80 dated 11th August, 1992 is produced by the respondent as Annexure R2 which has an endorsement of receipt of the reply on 18th August, 1992 at 2.00 PM. It was thus contended that even the explanation given by the respondent was not taken into consideration and in the circumstances no reasonable opportunity was given to the respondent.

11. Learned counsel for the petitioner has very emphatically contended that the respondent has been simply discharged and consequently no inquiry was to be conducted. Learned counsel for the petitioner has relied on (1997) 4 SCC 391, Himanshu Kumar Vidyarthi and Others v. State of Bihar and Others; (2006) 11 SCC 684, Jaipur Development Authority v. Ramsahai and Others; 133 (2006) DLT 24, Ajay Kumar Sharma v. Presiding Officer, Labour Court No.VI; (2006) 4 SCC 1, Secretary, State of Karnataka and Others v. Umadevi (3) and Others; 122 (2005) DLT 576, Ramesh Chand Sharma and Others v. Commissioner of Police and Others; (2006) 7 SCC 558, Om Prakash Mann v. Director of Education (Basic) and Others; AIR 2007 Supreme Court 705, Government of India and Another v. George Philip; AIR 2005 Supreme Court 1924, Madhya Pradesh Electricity Board v. Jagdish Chandra Sharma; (2004) 8 SCC 129, State of Punjab v. Jagir Singh; (2007) 2 SCC 433, J.K. Synthetics Ltd. V. K.P. Aggrawal and Another; (2005) 9 SCC 278, University of Bihar and Others v. Kamal Deo Thakur and Others; (2002) 10 SCC 433, Pyare Jan and Another v. Karnataka Electricity Board and Another and 1995 Supp (4) SCC 715, Ex.Capt. Ashwani Kumar Katoch v. Union of India and Others in support of his contention that the dismissal of the respondent was on account of alleged mis-behavior with the Junior Engineer on 8th August, 1992 and since the respondent was a daily wager, it was a discharge simplicitor

and the respondent being employed as a daily wager is not entitled for reinstatement.

12. Learned counsel for the workman has relied on 2007 Lab.I.C. 3528, M.C.D. v. Naresh Kumar & Another; 1999 Lab.I.C. 619, M.C.D. V. Praveen Kumar Jain and Others; 2000 Lab.I.C. 1377, Nar Singh Pal v. Union of India and Others; (1984) 2 SCC 433, Brahma Chandra Gupta v. Union of India; (1982) 1 SCC 645, L. Robert D'Souza v. Executive Engineer, Southern Railway and Another; 82(1999) DLT 958, Anil Kumar v. Presiding Officer, Labour Court No.II & Another; (1983) 4 SCC 611, Jai Bhagwan v. Management of the Ambala Central Co-Operative Bank Ltd. And Another; 2006 II AD (Delhi) 43, Amar Pal (Shri) & Another v. MCD; (2003) 4 SCC 27, S.M. Nilajkar and Others v. Telecom District Manager, Karnataka and 2006 I AD (S.C.) 166, Sonapat Cooperative Sugar Mills Ltd. V. Rakesh Kumar to contend that the respondent was not employed in a project or for a temporary duration nor the respondent was on the contract but was a daily wager and consequently the provisions of Section 25(F) of the Industrial Disputes Act, 1947 shall be attracted. It was also contended that for the alleged mis-conduct, the termination of the services of the respondent cannot be termed discharge simplicitor and in the facts and circumstances the respondent could be terminated only after holding a proper inquiry and finding him guilty.

13. Both the counsel have relied on certain observations made in a number of judgment which are detailed hereinabove. It is no more res integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Considering the present facts and circumstances, it may not be necessary to deal with judgments in detail relied on by the parties in the facts and circumstances of the present case as the present case is apparently distinguishable from the fact situation of the decisions relied on by the parties. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr., AIR 2004 SC 778 had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.

Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme had observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

Similarly In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court had also observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. The counsel for the parties have mainly relied on few observations made in these cases.

14. Perusal of the precedents relied on by the learned counsel for the petitioner, Mr.Sewa Ram, reflect that most of the judgments are not relevant for the disputes between the parties. In case of Himanshu Kumar Vidyarthi and Others (supra), it was held that every department of a Government cannot be treated as an industry and, therefore, dispensing with the services of person engaged on daily wages in a Government department cannot be a retrenchment. The judgment relied on by the petitioner is apparently distinguishable as Municipal Corporation of Delhi is not a Department of Government of India. In any case, the services of the respondent has been terminated on account of allegations made against him that he was drunk on duty and he had misbehaved with a Junior Engineer. The ratio of the judgment relied on by the petitioner in Jaipur Development Authority (supra) is also not applicable as in that case it was held that Section 25 (F) on the one hand and Section 25 (G) and 25(H) were enacted to meet the situations of different kind. It was further held that the statute does not envisage application of the provisions of the Act and the rules where both recruitment and termination are uncertain or when the workmen are recruited in a category wise service, e.g., skilled, semi skilled or unskilled, etc. In this case, it was held that departmental proceedings for a daily wager who kept on coming and going on different dates and in such circumstances, it was held that the departmental proceedings for his absence on various dates was not necessary. In

contradistinction, in the case of the respondent, he has been dismissed on account of a specific misbehavior/misconduct alleged against him that he was drunk and misbehaved with the superior Junior Engineer without considering his explanation and without conducting an enquiry against him. The ratio of this case does not lay down that if a daily wager is to be dismissed on account of specific allegation of misbehavior, no departmental inquiry would be required. Similarly, the judgment of the Ajay Kumar Sharma (supra) relied on by the petitioner is distinguishable as a single Judge of this Court was concerned about the regularization of a daily wager or a temporary employee or a casual worker who had continued for time beyond the terms of his appointment and it was held that such a person was not entitled for regularization and is not to be absorbed permanently relying on the case of Secretary, State of Karnataka and Others (supra). In Secretary, State of Karnataka and Others (supra) also, the Supreme Court did not lay down that if the services of a daily wager is to be terminated on account of mis-conduct on his part, no departmental proceedings shall be required. The respondent has not granted the claim of regularization by the Tribunal rather he has been granted reinstatement on account of non compliance of Section 25 F of the Industrial Disputes Act, 1947. The respondent has challenged his termination as a daily wager without considering his reply to the show cause notice given to him and without conducting a proper inquiry.

15. In the case of Ramesh Chand Sharma and Others (supra), a single Judge had noticed that Shri Ramesh Chand Sharma had also ventilated his grievance before the Central Administrative Tribunal which had returned a finding that a proper opportunity had been given to the applicant to defend his case and, therefore, learned single Judge had not departed from that view. The case of the present respondent in comparison is entirely different as no inquiry was conducted nor any opportunity had been given to him as even a reply which was submitted by him on 18th August, 1992, which is apparent from the endorsement made thereon, had not been considerate and pursuant to show cause notice which was admittedly served on the respondent on 17th August, 1992, the termination order was passed on 18th August, 1992. The plea of the petitioner is not supported even by the ratio of Om Prakash Mann (supra) relied on by the petitioner as in this case though the delinquent had participated in the disciplinary proceedings without demur and had not raised any plea regarding charges being vague and, therefore, it was held that the delinquent employee was stopped from raising the said issues before the Supreme Court. It was rather held that there was no violation of principle of Natural Judge in contradistinction to the finding of the Labor Court in the present case that there has been violation of the principle of natural justice and no reasonable opportunity was given to the respondent. In the case of Government of India and Other v.

Geroge Philip (supra), it was rather held that the High Court exercising jurisdiction under Article 226 of the Constitution of India does not hear an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee and the jurisdiction is limited, and the punishment imposed cannot be set aside altogether unless there has been substantial non-compliance of rule of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or if the punishment is shockingly disproportionate to the gravity of charge. In Madhya Pradesh Electricity Board (supra), a delinquent employee was awarded punishment after due inquiry and the question before the Apex court was whether the interference with the punishment by the Labor Court was justified or whether the punishment imposed was so harsh or disproportionate to the charges proved. In case of the respondent though the allegation has been made that the respondent had been a habitual drunker and under the influence of liquor he misbehaved on 8th August, 1992 with a Junior Engineer, however, without framing the charges against him and giving him a reasonable opportunity, he has been dismissed from the services. Even his reply to the notice given by him has not been considered. Consequently, on the basis of the ratio of Madhya Pradesh Electricity Board (supra), it cannot be held that the respondent could be dismissed without a due opportunity as contemplated under law. No doubt, the court should

not condone the act of physical violence and thus interfere with the sustenance of discipline in the organization, however, in case proper inquiry has not been conducted nor the explanation of the respondent workman has been considered, the court shall be justified in interfering with the dismissal of the workman, even if he is a daily wager, from the services.

16. The Labor Court after consideration of law and the plea and the deposition has held so and thus this Court does not find any fault with the findings of the Labor Court so as to substitute the finding of the Labor Court with its own, in the facts and circumstances. The ratio of other judgments relied on by the petitioner, i.e., J.K. Synthetic Ltd. (supra), University of Bihar and Others (supra), Pyare Jan (supra) also do not lay down that a daily wager against whom specific allegation of mis-behavior had been made by the petitioner, could be dismissed without conducting proper inquiry. In the circumstances, the finding of the Labor Court that dismissal of the services of the respondent is not a discharge simplicitor cannot be faulted.

17. A single judge of this Court in MCD v. Naresh Kumar and Others (supra) had rather held that termination of services of a daily wager chowkidar on the ground of mis-conduct without serving any charge sheet or conducting any domestic inquiry nor termination order

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accompanied by a salary in lieu of notice as payable to the workman shall be in compliance with the provisions of Section 25 (F) of Industrial Disputes Act, 1947 and termination shall be violative of principle of natural justice and in the circumstances had directed reinstatement of the daily wager chowkidar holding that such a workman before being visited by such a grave civil consequence as termination of service was entitled to be afforded an opportunity of hearing followed by a departmental inquiry. The single Judge had also held that even if it is assumed that the termination of the services of the respondent was not stigmatic but a termination simplicitor, such a termination of a daily wager was not in consonance with the provisions of Section 25(F) of Industrial Disputes Act, 1947, and consequently the daily wager chowkidar in that case was reinstated. Similarly, the Supreme Court in *MCD v. Praveen Kumar Jain* (supra) had held that the termination of casual muster roll employee on the ground of a misconduct without conducting any inquiry, is not in consonance with the provisions of Section 25 (F) of the Act, will not be sustainable and such an employee shall be entitled for the consequences of wrongful termination in non-compliance of Section 25 (F) of the Act.

18. The Supreme Court in the case of *Nar Singh Pal* (supra) had also held that the termination of service of a workman who had acquired temporary status without conducting an inquiry and merely by paying

retrenchment compensation and the order passed on the basis of a preliminary inquiry and not on the basis of a regular departmental inquiry without issuing a charge sheet or giving opportunity of hearing shall be liable to be set aside despite the fact that the cheque of termination compensation paid by the management had been encashed by the workman. It was held that if the termination of a workman is punitive in nature and is in violation of principle of natural justice, such termination order shall be contrary to his constitutional rights and such a workman shall be entitled for relief.

19. The Apex Court in a number of case have held that even a casual or seasonal workman who has rendered continuous service for one year or more cannot be retrenched without complying with the requisites of Section 25 (F). Reliance can be placed on L. Robert D'Souza (supra), Ratan Singh v. Union of India, (1997) 11 SCC 396; 1982 LLR 2160 Samistha Dubey v. City Board, Itawah; (1998) 8 SCC 460, Municipal Corporation of Delhi v. Praveen Kumar. It is settled law that the expression "termination of service for any reason whatsoever" in the definition of the expression "retrenchment" in Section 2(oo) of the Act covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF. Therefore, even striking off the name of a workman from the rolls without anything

more constitutes retrenchment within the meaning of the expression “retrenchment” in Section 2(oo). Thus if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo). The Apex Court in the case of S.M. Nilajkar v. Telecom District Manager,(2003) 4 SCC 27 had spelt out the cases where termination of services of a workman will not be retrenchment and engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he has been engaged for a fixed period and after that he would not be entitled to continue. It was held at page 37 of S.M.Nilajkar(supra) as under:

“13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
- (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

20. From the award passed in favor of the respondent, it is not to be mis-construed that the respondent has been regularized and such as

regularization is contrary to the ratio of (2006) 4 SCC 1, Secretary, State
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of Karnataka and Others versus Uma Devi & others. From the award it is apparent that the petitioner has been reinstated on account of non-compliance of the provisions of Section 25 F of the Industrial Disputes Act, 1947. The petitioners may be entitled to retrench him in accordance with first-come-last-to-go principle on reinstatement he is not being regularized. This is not disputed that the respondent has worked for more than 240 days in a year for a number of years before his termination which has been established and nothing has been produced to the contrary. The findings of the Labor Court in this regard, therefore, cannot be interfered with. Since the provision of section 25 F of the Industrial Disputes Act, 1947 were applicable in the case of respondent and were not complied with, the Labor Court was justified in reinstating the respondent. The reliance of the learned counsel for the petitioner on decisions of the Supreme Court that the daily wagers cannot be regularized merely on account of having worked for more than 240 days in a year for a number of years is thus, not relevant in the facts and circumstances as the respondent has been reinstated on account violation of section 25F of the Industrial Disputes Act, 1947.

21. Consequently, the inevitable inference is that the termination of the respondent is punitive in nature which have been awarded without issuing a charge sheet against the respondent for his alleged mis-

behavior with his senior and dismissal on the ground that the respondent misbehaved with his senior in a state of drunkenness cannot be termed discharge simpliciter. The finding of the Labor Court that dismissal of the respondent could not be termed as discharge simpliciter cannot be faulted. Even if the respondent was a daily wage, the services could be dispensed after complying with the provisions of Section 25(F) of the Act. Admittedly, neither any compensation was given nor any notice as contemplated under Section 25(F) of the Act was given. The findings of the Labor Court, in the facts and circumstances, do not suffer from any manifest error nor the learned counsel for the petitioner has been able to point out any perversity so as to entail interference of this Court in exercise of his jurisdiction under Article 226 of the Constitution of India.

22. Considering the facts and circumstances, there is no infirmity in the order of the Tribunal holding that the action of the petitioner in terminating the services of the workman was not proper, legal and justified and if that be so, he is entitled for reinstatement and 50% back wages in the pay scale of 750-940. The writ petition, in the facts and circumstances, is without any merit and it is dismissed.

February 28th, 2008.
'k/Dev'

ANIL KUMAR, J.