

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

+ **WP(C) No.827/2008**

% **Date of decision : February 25th,2008**

The Management of
State Bank of Hyderabad & Others Petitioner
Through: Mr.A.V.Rangam, Advocate.
Versus

Roshan Lal Respondent
Through : Nemo.

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. (Oral)

1. The petitioner has impugned the award dated 28th August, 2007 of the Labor Court reinstating the respondent along with 50% back wages for non compliance of provisions of section 25 F of the Industrial Disputes Act, 1947.

2. The claim of the respondent was that he had worked continuously from 5th September, 1997 at Rs.740/- per month and he was appointed after interview and he performed his duties from 9 AM to 6 PM. The respondent had contended that he was not given appointment letter, minimum wages, earned leave, casual leave and

OT though similarly employed persons, Shri Raj Kumar @ Raju, Pratap Singh and Kartar Singh were taken on regular basis and he has been deprived of it. He also stated that he was asked not to come and work as a letter dated 28th April, 2003 was received from the Head Quarter for not taking him on duty. It was also asserted by the respondent that the copy of the letter from the Headquarter was not given to him but his services were terminated. The respondent claimed that he had not been given any notice nor any amount nor retrenchment compensation and earned leave under the provisions of the Industrial Disputes Act, 1947 and his termination was in violation of Section 25 F of the Industrial Disputes Act, 1947 and therefore, he is entitled for reinstatement and payment of back wages.

3. A reference was made by the Ministry of Labour by letter dated 16th November, 2004 to the effect “whether the action of the Regional Manager, State Bank of Hyderabad, 882, 1st Floor, East Park Road, Karol Bagh, New Delhi in terminating/discontinuing the service of the respondent and not giving full salary of Peon from 5th January, 1997 is just, valid and legal and to what relief the respondent shall be entitled and what directions are necessary in the matter?”

4. The claim of the respondent was contested by petitioners contending inter alia that he was not a workman and he was not

appointed in any permanent vacancy nor any appointment letter was issued. It was also asserted on behalf of petitioners that the respondent never worked continuously even as casual labour/daily wager and considering the contingencies and exigencies of circumstances, he was engaged as a casual labor, therefore, he does not have any right for regularization. The violation of Section 25 F of the Industrial Disputes Act, 1947 was denied by the petitioner.

5. On the basis of the pleadings and the evidence of the parties, the Labor Court held that respondent is a workman based on the documents produced and proved including Ex.WW1/1, Identity Card; Exh.WW1/2, letter dated 11th January, 1998 regarding regularization of temporary employees in which the respondent was placed at serial number 1 as a candidate and his place of work had been shown at Chandni Chowk which letter was issued by the AGM to the Dy. AGM for regularization of the services of the workmen. The reliance was also placed on Ex.WW1/3, the identity card in which the respondent has been designated as a Peon. These documents have not been denied by the petitioners which categorically reflect that the respondent was initially appointed as a part time worker and in 1998 as Peon and on 22nd January, 2001, the Committee constituted for regularization of temporary employees/daily wagers had recommended the name of the respondent for regularization.

6. Though the petitioners have denied that there is relationship of employer and employee but from the evidence produced before the Labor Court, the plea of petitioners has been disbelieved. Nothing has been shown by the learned counsel for petitioners to negate the findings of the Labor Court regarding the employment of the respondent and that the respondent worked for more than 240 days for a number of years. Relying on Section 11-A of the Industrial Disputes Act and on AIR 2002 SC 1313, it has been held that the respondent is entitled for reinstatement even though he is alleged to be a daily wager on account of non-compliance of Section 25 F of the Industrial Disputes Act, 1947.

7. The Labor Court has categorically held that the reinstatement should not be mis-construed as regularization which is the sole plea by the learned counsel for petitioners relying on (2006) 4 SCC 1, Secretary, State of Karnataka and Others v. Uma Devi and Others. The Labor Court has held that on reinstatement of the workman 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. It was also held that the respondent is reinstated on account of violation of

the provisions of the Industrial Disputes Act, 1947 and on reinstatement he is not being regularized.

8. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings of the lower courts and restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance can also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union* AIR 2000 SC 1508; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior Labor Court or subordinate court unless it suffers from an error of jurisdiction, or from a breach

of the principles of natural justice or is vitiated by a manifest or apparent error of law.

9. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Labor Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. **Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Labor Court in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own**

independent findings on the evidence. The Court/Labor Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Labor Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”**

10. From the evidence on record, it is apparent that the finding of the Court that the respondent worked for more than 240 days for several years with the petitioners cannot be disputed and it cannot also be disputed that there is relationship of employer and employee between the petitioners and the respondent. There is no manifest error or perversity in the findings of the Labor Court nor there is violation of principles of natural justice in the facts and circumstances.

11. Learned counsel for the petitioner has also relied on Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408 holding that regularization cannot be a mode of appointment and the rules of recruitment cannot be relaxed and the Court/Labor Courts cannot direct regularization of temporary appointees de hors the rules. Learned counsel for

petitioners has contended that even if the respondent had worked for 240 days, he could not be reinstated. The judgment relied on by petitioners is apparently distinguishable. The case of the respondent is not of regularization nor the Labor Court has directed the petitioners to regularize the respondent. The case of the petitioners is not under Section 2(oo)(bb) of the Industrial Disputes Act, 1947. The petitioners have not produced any documents to show that the respondent was appointed on the project(s) and his appointment was short lived or he was appointed for a fixed period and after the expiry of fixed periods, he was not entitled to continue. Rather no cogent evidence has been led by the petitioners in this regard. It has rather been established that the respondent continuously worked during the years 1997 to 2002. The petitioners have failed to establish as to how the respondent was not regularized once the letter dated 22nd November, 2001 was produced by the respondent stipulating regularization of the temporary employees/daily wagers in which the respondent was placed at serial number 1 as a Scheduled Caste candidate and his place of work had been fixed at Chandni Chowk.

12. Sub clause (bb) was introduced by amendment in 1984 to take out a particular class of employment on contract basis under any project or for some specific period from the ambit of Section 25 F of Industrial Disputes Act, 1947. The petitioners, however, have failed to

establish that the case of the respondent was covered under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947. The case of the petitioners is not that the respondent was appointed purely on casual and temporary basis for specific work and his work was over and no extension was given. Rather it has been established by the respondent that he worked continuously for more than 240 days in a year for a number of years. Since the termination of the respondent is not in accordance with any contract and the respondent had worked for more than 240 days from 1997 to 2003, the provisions of Section 25 F of the Industrial Disputes Act, 1947 were attracted and for non-compliance of the same, the Labor Court has rightly held that petitioners are liable to reinstate the respondent and pay 50% back wages. Labor Court has categorically clarified that reinstatement of the respondent is not regularization and the petitioners shall be entitled to resort to first-come-last-to-go principle in case the petitioners want to retrench the respondent.

13. 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 simpliciter, 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.

14. 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 Labor Court has clarified that reinstatement is not regularization. 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 of violation of section 25F of the Industrial Disputes Act, 1947.

15. The award of the Labor Court does not have any manifest error or any perversity so as to entail interference by this Court under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The writ petition, is, therefore, dismissed. The parties are however, left to bear their own costs.