

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

+ **W.P.(C) NO. 11009/2006**

% **Reserved On : 14.01.2009**
Date of Decision : 26.02.2009

MATA SUNDRI COLLEGE FOR WOMEN Petitioner

Through Mr. Sudhir Nandrajog, Advocate

Versus

SH. VIJAY PAL Respondent

Through Mr. Mahipal Singh, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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

V. K. SHALI, J.

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1. This is a writ petition filed by the petitioner/college against the award dated 11th July, 2005 passed by the Presiding Officer, Labour Court No. 1, Karkardooma, Delhi in case titled ***Mata Sundari College for Women & Ors. Vs. Its workman Vijay Pal.*** By virtue of the impugned award dated 11th July, 2005 the Ld. Labour Court has directed the reinstatement of the respondent/workman with the petitioner/college with full back wages as his termination w.e.f. 26th March, 2002 was held to be illegal and unjustified.

2. Briefly stated the facts leading to the filing of the present writ petition are that the Secretary (Labour), Government of NCT of Delhi

made a reference under Section 10(1) (C) and Section 12 (5) of the Industrial Disputes Act, 1947 to the Ld. Labour Court in the following terms:

“Whether the services of Sh. Vijay Pal, s/o Sh. Sunder Singh, R/o VPO Bamnoli, Delhi has been terminated illegally and unjustified by the petitioner/college and if so, to what sum of money as monitory relief along with the consequential benefit in terms of existing laws/Government notification and to what other relief is he entitled and what directions are necessary in this respect?”

3. On the basis of the aforesaid reference the respondent/workman filed a statement of claim alleging that he was appointed as a Sports Attendant by the petitioner/college on 14th July, 2000 on a monthly salary of Rs. 2700/-. He alleged that he worked continuously without any interruption till his alleged illegal termination. It is alleged that the respondent/workman was promoted to the post of Office Attendant vide letter dated 24th/31st January, 2001 in the pay scale of Rs. 2550-55-2660-3200 along with usual allowances as permissible under Delhi University Rules. The respondent/workman continued to work with the petitioner/college till March, 2002. On 26th March, 2002 he received a letter to be effective from 25th March, 2002 dispensing with his services. The respondent/workman alleged that he worked with the petitioner/college till 26th March, 2002 and from 27th March, 2002 he was not permitted to resume his duties.

4. It was alleged that on the basis of this, the respondent having worked for more than 240 days in a calendar year and dispensing with the services without complying with the provisions of Section 25 (F), (G)

and (H) of the Industrial Disputes Act, 1947 was unsustainable as he was neither paid retrenchment compensation nor he was taken back into service. He further stated that he has continued to remain unemployed, and therefore, had made a prayer for reinstatement with full back wages.

5. The petitioner/college contested the claim of the respondent/workman and contended that the appointment of the respondent/workman was purely on 'temporary' basis, as Office Attendant. It was alleged that he was a contractual employee for a limited period as Sports Attendant due to the exigency of work, and therefore, discontinuation of his services did not carry with it any obligation to pay compensation as envisaged under Section 25(F) of the Industrial Disputes Act, 1947. For the purpose of elaborating that the appointment of the respondent/workman as Office Attendant was purely temporary and on account of exigency of work, he was kept in service by the petitioner/college from 09.02.1999 to 09.03.1999, 11.03.1999 to 10.04.1999, 12.04.1999 to 11.05.1999, 01.02.2001 to 30.04.2001, 02.05.2001 to 01.07.2001, 03.07.2001 to 21.09.2001, 24.09.2001 to 23.11.2001, 24.11.2001 to 23.12.2001 and 27.12.2001 to 25.03.2003. Further, it was contended by the petitioner/college that on account of having dispensed with his services and the fact that the respondent/workman was purely contractual or at best temporary employee under Section 25 (F) and (G) of the Industrial Disputes Act, 1947 would not be attracted, and therefore, the order of the Ld. Labour

Court directing reinstatement with 100% back wages was totally unsustainable in the eyes of law.

6. I have heard the learned counsel for the parties and perused the record. I have also carefully considered the submissions made by the petitioner/college. The main contention of Mr. S. Nandrajog, learned counsel for the petitioner/college is that the appointment of the respondent/workman was purely temporary and contractual in nature, and therefore, he could not claim either regularization much less could be Ld. Labour Court direct the reinstatement of the same with full back wages. It was also urged that under Section 25 (F) of the Industrial Disputes Act, 1947 specifically excludes the persons whose services are terminated on account of non-renewal of the contract by the employer after the expiry of their contractual period. For this purpose, the learned counsel drew my attention to Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 and also referred to the authorities of the Hon'ble Supreme Court in order to substantiate his submissions. These authorities are **M.P. housing Board & Anr. Vs. Manoj Shrivastava (2006) 2 SCC 702, Haryana State Agricultural Marketing Board Vs. Subhash Chand & Anr. (2006) 2 SCC 794, M.P. State Agro Industries Development Corporation Ltd. & Anr. Vs. S. C. Pandey (2006) 2 SCC 716, Delhi Transport Corporation Vs. Presiding Officer & Anr. 82(1999) DLT 648 (DB) and Madhya Pradesh Administration Vs. Tribhuban (2007) 9 SCC 748.**

7. I have gone through these authorities. The question to be considered is as to whether the respondent/workman could be said to

be a contractual employee or not. Coming to the facts of the present case, this is not disputed that the respondent/workman had joined duties on 17th July, 2000. As against this, the respondent nos. 1 and 2 had categorically made an admission in their written statement to the statement of claim that the respondent/workman, in fact, has been working from 9th February, 1999 and not from the date given by the petitioner/college. On the contrary, it has been stated by the petitioner/college that the respondent/workman had been continuously working on temporary basis w.e.f. 9th February, 1999. If the appointment of the respondent/workman is taken to be w.e.f. 9th February, 1999, he has admittedly continued up to 25th March, 2002 which makes it more than 240 days in a year and if at all any break of service was there, it has been given only as an artificial break by the petitioner/college with a view to evade its liability under the laws governing such appointment. The learned counsel for the petitioner has placed on record three letters dated 14th July, 2000, 24th January, 2001 and 22nd March, 2002. In the first two letter all that has been stated is that the petitioner has been appointed purely on ad hoc basis while as none of these two letters specify that the appointment of the respondent/workman was contractual in nature which would come to an end on account of expiry of the contract period or by efflux of time. On the contrary, in the letter dated 22nd March, 2002, it has been stated that the tenure of the respondent/workman is temporary in nature will come to an end as Office Attendant w.e.f. 25th March, 2002. Therefore, in my considered opinion, there was no evidence on record

before the Ld. Labour Court or even before this Court to hold that the respondent/workman was appointed as a contractual employee. The only evidence which has come on record is that he was being appointed on purely ad hoc basis as a stop gap arrangement or a temporary employee for different purpose even though artificial breaks were being given to him for the purpose of camouflage and evade the provisions of the Industrial Disputes Act, 1947. For these reasons, I am of the view that the respondent/workman was not a contractual employee, but was a temporary employee who had admittedly worked for 240 days in a year as has been rightly held so by the learned Tribunal below.

8. The contention of the learned counsel for the petitioner/college that under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 does not make the provisions of retrenchment applicable on such contractual employees also in my view is bereft of any merit. It would be pertinent here to reproduce Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 which reads as under:

“2(oo). “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include –

(a) voluntary retirement of the workman; or

(b) 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; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such

contract being terminated under a stipulation in that behalf contained therein.”

9. A perusal of the aforesaid provisions would clearly show that where the termination of the services of a workman is on account of non-renewal of his contractual employment between the employer and the workman concerned or on account of contract having come to an end by a efflux time in such a case the provisions of retrenchment would not be applicable, and accordingly, the employee will not be entitled to retrenchment compensation.

10. However, as has been stated, hereinabove, that since the respondent/workman was not a contractual employee, therefore, the said provision would not be applicable to him. On the contrary, the respondent/workman is shown to have worked for 240 days continuously in a year, and therefore, the provisions of Section 25(F) of the Industrial Disputes Act, 1947 have been observed more in breach than in compliance. I am, accordingly, of the opinion that the Ld. Labour Court has rightly held to be the termination of the respondent/workman to be illegal and unjustified.

11. The learned counsel for the petitioner has drawn my attention to the various authorities details of which stated, hereinabove. I have gone through the authorities cited by the learned counsel for the petitioner/college, however, I feel none of the authorities which has been cited by the learned counsel for the petitioner would be applicable to the facts of the present case.

12. In **Manoj Shrivastava's** case (supra), the Hon'ble Supreme Court was concerned with the regularization of a daily wager who was appointed as Sub-Engineer (Civil) wherein the learned Court has held that where a person is appointed as a daily wager or as a casual labour in a post which is not a sanctioned post and his appointment has also not been made in accordance with the recruitment rules in such a case he could not claim regularization because his initial appointment itself is in contravention of not following the statutory provision of his appointment. Moreover, there is no post of the Executive Engineer to which he would have been regularized.

13. Similarly, in **Subhash Chand's** case (supra) also it has been observed by the Hon'ble Supreme Court that if the nature of termination of service does not come within the purview of Section 25(G) of the Industrial Disputes Act, 1947 on account of the person being appointed on a seasonal contract then he cannot get the benefit of either regularization or Section 25(T) of the Industrial Disputes Act, 1947. In such a case, it has been observed that the termination of services of such engineer is on account of non renewal of their contract.

14. As against this, it has been held in such a case that while dealing with the welfare legislation specially labour law the Court will be well within its power to lift veil in order to find the real purpose and intent of the employer in appointing the workman. In the instant case, not even a single document has been placed on record by the petitioner/college to the effect that the real intent purpose of respondent no.2/workman was purely temporary in nature. On the contrary, the first letter of

appointment on 14th July, 2000 shows that he was appointed no doubt, on temporary basis. However, thereafter his services seemed to have been continued from time to time. Therefore, this clearly indicates that this was not a bona fide exercise of the power by the petitioner/college to recruit the respondent no. 2/workman which is subsequently sought to camouflaged as a temporary appointment. Therefore, I do not find any infirmity or illegality in the findings of the Ld. Labour Court in declaring that the provisions under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 are not applicable so far as the services of the respondent/workman are concerned. So far as the other authorities are concerned, they are also not applicable to the facts of the case because the petitioner was not a contractual employee. He was an employee who had worked for 240 days and who was being given artificial breaks to circumvent the law.

15. Now, the only question which arises for consideration is, as to whether, the respondent/workman is entitled to the back wages or not. In this regard, the provisions of Section 11(A) of the Industrial Disputes Act, 1947 specifically empowers the Ld. Labour Court to the effect that in a given case if he feels that the reinstatement would not be conducive to the industry or the industrial relation between the employer and the employee where the respondent/workman is working, in such a case, the tribunal was well within its rights to grant compensation rather than compel the petitioner who has breached the faith qua the respondent/workman to grant him one time amount by way of permanent settlement to the respondent/workman.

16. There are decisions of the Supreme Court, namely, ***Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court & Ors., 1995 Supp (4) SCC 548***, and ***Rattan Singh Vs. Union of India & Anr., 1997 (11) SCC 396***, wherein reinstatement was declined to the workman who was instead awarded compensation in lieu thereof. Similarly in ***Talwara Cooperative Credit Society Ltd. Vs. Sushil Kumar 2008 (9) SCC 486***, the Supreme Court more recently held that relief of reinstatement is a trite and is not automatic nor is the grant of back wages automatic. The Courts while exercising their power under Section 11 of the Industrial Disputes Act are required to strike a balance in a situation of this nature.

17. In the light of the aforesaid pronouncement, I am of the view that, no doubt, the petitioner has been unable to establish that the respondent/workman was covered by the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947, and therefore, the order of reinstatement and the back wages cannot be set aside. On the contrary, I feel that a Ld. Labour Court was perfectly justified and legal in concluding that the aforesaid provision of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 did not apply to the facts of the present case as the respondent/workman was not a contractual employee. The appointment to the post of temporary workman was extended from time to time though there was a change of designation also from Sports Attendant to Office Attendant and grant of regular scale which showed that he was not an contract or ad-hoc or even temporary.

18. I feel that as in the present circumstances where the respondent no. 3/University has not approved the permanent appointment of the respondent/workman, it would have been proper for the Ld. Labour Court to grant damage/compensation to the respondent/workman instead of his reinstatement. In the light of the aforesaid facts and circumstances of the case, I am of the considered opinion that it would be in the interest of justice in case instead of reinstatement of the respondent/workman with full back wages from 2000, a compensation of Rs.1.00 lakh be granted which in my view will be adequate and just to be given to the respondent/workman on account of having terminated his services illegally. This amount has been fixed keeping in view the monthly salary which the respondent was earning and the number of years of service which he had put in with the petitioner/management. For these reasons, the award dated 11th July, 2005 is modified only to the extent that instead of directing the reinstatement with 50% back wages to the respondent/workman. He shall be paid a sum of Rs.1.00 lakh towards the full and final settlement of his entire claim under Section 11 (A) of the Industrial Disputes Act, 1947.

No order as to costs.

February 26th, 2009
KP

V.K. SHALI, J.