

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

+ **W.P.(C) No. 23591-92/2005**

% Decided on : 05.03.2009

U. O. I. & ORS.

. . . Petitioners

through : Mr. A. K. Bhardwaj, Advocate

VERSUS

BIMAL KRISHNA DASS

. . . Respondents

through: Mr. A. K. Trivedi, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The respondent herein was engaged as Badli worker between May, 1998 to May, 2000. When he worked intermittently and with breaks during this period, he was disengaged after May 2000. The respondent approached the Tribunal and filed OA no. 2600/2002 stating his claim for appointment for regular establishment with the department, that is, Delhi Milk Scheme. On the basis of scheme for regularization prepared by DMS, in fact, the respondent had made a request in this behalf in that OA. Orders dated 8.1.2003 were passed directing the petitioner herein to pass a reasoned order. In compliance thereof the petitioner passed orders dated 30.6.2003 rejecting the request of the respondent herein. In these circumstances, respondent approached the Tribunal again and filed OA 1929/2004 assailing the said orders dated 30.6.2003. This OA of the respondent has been allowed by the Tribunal. While setting aside order dated 30.6.2003 passed by the petitioner, directions were given to the petitioner to consider the

case of the respondent for appointment on regular establishment and in that event of consequential benefits be also accorded to him. The validity of this order is the subject matter of the present writ petition. It would be necessary to take note of the relevant provision of the certifying standing orders duly certified by the labour office under the provisions of Industrial employment standing orders and such standing orders are therefore of statutory nature.

2. Para 4 of these standing orders classifies various workers in three categories, namely, casual, badli and apprentice. Since we are concerned with a Badli worker following provision is made in respect of such workers.

“(iii) ‘Badli’ means a worker who is employed for the purpose of working in place of regular employee who are temporarily absent:

Provided that a Badli worker who has actually worked for not less than 240 days in any period of 12 months shall be transferred to regular/establishment governed by the Fundamental and Supplementary Rules.”

3. As per the aforesaid provision a Badli worker who has actually worked for not less than 240 days in any period of 12 months is to be transferred to regular/establishment. The case of the respondent was that he had worked for more than 240 days for the period from November, 1998 to October 1999 and therefore he had become entitled to be transferred to regular/establishment. The petitioner, on the other hand, had contended before the Tribunal that the services of the respondent were dispensed with in May, 2000 and the relevant period which is to be taken into consideration while ascertaining as to whether such Badli worker has worked for 240 days or not would be the preceding 12 months from the date of disengagement. On that basis according to the petitioner the relevant period was June, 1999 to May, 2000 and during this period respondent had worked for

only 228 days and was therefore not entitled to benefit of regularization. Learned counsel for the petitioner in support of his submission referred to the judgment of Supreme Court in case of *Karnataka State Road Transport Corporation v. S. G. Kotturappa* 2001 (1), Supreme Court Service Law Judgment, 441 and specifically referred to the observations made therein:

“It is not case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25F read with Section 25B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor the mandatory requirements of Section 25F of the Industrial Disputes Act were required to be complied with before terminating his services, unless they complete 240 days’ service within a period of twelve months preceding the date of termination.”

4. A bare reading of the aforesaid extract from the said judgment would demonstrate that while deciding the issue of completion of 240 days of service, the discussion was with reference to the provision of Industrial Disputes Act. Under Section 25 (b) of the said Act specific terminology used is “240 days service preceding the date of termination” on that post. Under the provision of that act question which arises for consideration is about the payment of retrenchment compensation. However, in the present case, we are only concerned with the standing orders duly certified by the labour department and in the relevant standing order as extracted earlier, the terminology used is “any period of 12 months” which is materially different than the language used in Section 25 (b) of the Industrial Disputes Act which talks of 12 months preceding the date of termination. In the present case the respondent herein if his submission is to be accepted had completed 240 days in the 12 months period starting from

November, 1998 to October, 1999 and therefore immediately after October 1999 he had become entitled to be transferred to regular establishment. We are, therefore, of the opinion that the words appearing in Para 4 of standing orders “in any period of 12 months” would cover in its ambit the case of the respondent. The second issue, however, arises for consideration is as to whether the respondent “actually” worked for 240 days during the said period. It is the submission of the learned counsel for the petitioner that he worked actually for 240 days would certify actual 240 working days excluding the holidays etc. This submission is based on the judgment of the Supreme Court in the *Bank of India and Anr. v. Tarun Kr. Biswan & Ors.* 2007 (9) Scale 443 wherein the Supreme Court held:

“The scheme to which both the appellant and the respondent have referred to in para 2 (1) speaks for 240 days of work in Budlee Service. Similar is the position in para 2 as quoted above. The scheme of budlee days is different. It denotes actual working days. *American Express’s* case (supra) has no application as the nature of work is different. Additionally, dispute is about as to whether the respondents had completed 240 budlee days.”

5. That was also a case of Badli worker and the court was concerned with similar provision. Therefore, while hearing whether the respondent had worked for 240 days during the period November, 1998 to October, 1999, actual working days will have to be taken into consideration. We, therefore, dispose of this writ petition with directions to the petitioner herein to consider the case of the respondent as directed by the Tribunal and while doing so calculate 240 days by taking into consideration actual working days. If on that reckoning it is found that respondent worked for 240 days or more, the directions as given by the

Tribunal shall be implemented. This exercise shall be completed within two months and appropriate order shall be passed in this behalf.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

March 05, 2009
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