

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

+ **W.P.(C) NO. 589/2006**

% **Date of decision: 13.03.2009**

N.D.M.C. Petitioner

Through Mr. Nitin Dahiya, Advocate

Versus

BRESH KUMAR Respondent

Through Nemo.

HON'BLE MR. JUSTICE V.K. SHALI

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

V. K. SHALI, J. (Oral)

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1. The petitioner in the writ petition has challenged the award dated 15th April, 2004 passed by learned Labour Court No. VII, Delhi in the case titled **The workman Bresh Kumar Vs. The Management of M/s New Delhi Municipal Committee, Sansad Marg, New Delhi** in I.D. No. 125/1995.

2. By virtue of the aforesaid award dated 15th April, 2004 the learned Labour Court has directed the reinstatement of the respondent/workman with 50% back wages.

3. That briefly stated the facts leading to the filing of the present case are that the Government of NCT of Delhi has made a reference to the learned Labour Court in the following terms:

“Whether the services of Sh. Bresh Kumar have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The respondent/workman is purported to have filed a statement of claim in response to the notice wherein he claimed that he was working as a Beldar in the Civil Engineering Wing of the NDMC since 17th March, 1990. It was further alleged by him that his services were terminated w.e.f. 21st March, 1993 without notice while as his juniors namely Suresh, Raju, Shanti and Sudesh are still working. The respondent/workman issued a demand notice to the petitioner/management which did not yield any result, and accordingly, the aforesaid dispute was referred to the learned Labour Court No.VII.

5. The petitioner/management filed its reply and took a plea that the services of the respondent/workman were purely temporary and casual. Further, he worked intermittently. There was no dispute about the year in which he was employed, however, it was denied that his services were terminated w.e.f. 21st March, 1993.

6. On the pleadings of the parties and in terms of the reference issues were framed and parties were directed to produce their evidence. The respondent/workman in support of his case filed his affidavit as Ex.WW1/1 and proved documents Ex.WW1/1 to Ex.WW1/4. So far as

the petitioner/management is concerned, it filed two affidavits of Sh. G. K. Sharma, JE and Sh. Pradeep Kumar Chauhan, JE. The testimony of the these witnesses of the Management remained unrebutted as they were not cross-examined by the respondent/workman despite opportunity having been given. The learned Labour Court after analyzing the evidence came to a finding that the respondent/workman had worked for a period of 342 days which was admittedly more than 240 days as envisaged an Industrial Disputes Act, 1947, and therefore, the termination of his services without compliance to Section 25(F) of the Industrial Disputes Act, 1947 was held to be illegal and without justification. Accordingly, the learned Labour Court directed the reinstatement of the workman with 50% back wages.

7. I have heard the learned counsel for the petitioner, however, none has appeared on behalf of the respondent/workman, therefore, I did not have the advantage of the hearing arguments on behalf of the respondent/workman.

8. It has been contended by the learned counsel for the petitioner/management that the learned Labour Court has fallen into grave error by assuming that the respondent/workman has worked continuously for 240 days in one year by drawing an inference on the basis of the testimony of the Junior Engineer to the effect that between the period of 17th May, 1990 to 20th March, 1993 he had worked for 342 days. It was contended by the learned counsel that the case of the petitioner/management was that the services of the respondent/workman were temporary in nature and he was working

only intermittently though he had actually worked for 342 days but in order to qualify to be brought within the ambit of the definition of workman of the Industrial Disputes Act, 1947, he had to establish that he worked continuously uninterruptedly for a period of 240 days. In the instant case, there is no evidence to this effect by the respondent/workman that he has worked continuously and uninterruptedly for 240 days. On the contrary, the testimony of the Junior Engineer of the petitioner/management is that he has in fact worked for 342 days but this was spread over period from 17th May, 1990 to 20th March, 1993 which roughly comes to 2 years and 10 months. In view of the matter, there could be no presumption that the respondent/workman has continuously worked for 240 days in order to get the benefit of the Industrial Disputes Act, 1947 to him. To that extent the learned Labour Court has fallen into grave error.

9. I fully agree with the submission by the learned counsel for the petitioner/management to the effect that in order to bring the case of the respondent/workman within the ambit of the Industrial Disputes Act, 1947 he ought to have proved prima facie that he has worked continuously, without any interruption for a period of 240 days. There is no evidence to that effect brought by the respondent/workman nor there is any discussion in this regard by the learned Labour Court. On the contrary, the testimony of the Junior Engineer of the petitioner/management is to the effect that the respondent/workman has worked for 342 days, but this period of 342 days is spread over period of 2 years and 10 months and in any case if the conservative

interpretation is given to the testimony it is a spread over period of 1 ½ year. On the basis of evidence as no presumption or assumption could be drawn that the respondent/workman has continuously worked for 240 days specially when a specific plea has been taken by the petitioner/management that the nature of job of the respondent/workman was temporary and intermittent. Thus, the learned Labour Court has fallen into grave error in assuming that the respondent/workman had worked continuously for 240 days and thereby granting him the benefit of reinstatement and payment of 50% back wages.

10. The non-appearance of the respondent/workman also tacitly supports the view that the respondent/workman knew that he was working almost on daily wages basis as a Beldar as and when he was called up to do so by the petitioner/management and that is the reasons why he chose not to appear in the Court. Therefore, I am of the considered opinion that the learned Labour Court has fallen into grave error in arriving at a finding which is not borne on the record or rather it is a case where the findings of the fact is based on no evidence and accordingly, the award dated 15th April, 2004 directing the reinstatement of the respondent/workman with 50% back wages is set aside and the termination of the respondent/workman is held to be perfectly legal and justified.

No order as to costs.

MARCH 13, 2009
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V.K. SHALI, J.