

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

+ **W.P.(C.) No. 11077/2009**

% **Date of Decision: 28th August, 2009**

SHRI DHARAMVIR SINGH PETITIONER
! Through: Mr. J.P. Dhanda, Advocate.

VERSUS

\$ THE MANAGEMENT OF M/S SHRI AURBINDO COLLEGE
.....RESPONDENT

^ Through: Nemo

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The workman, in this writ petition filed under Article 226 of the Constitution, seeks to challenge an industrial award dated 29.04.2009 of the Industrial Adjudicator granting no relief to him for alleged termination of his services from the respondent college w.e.f. 01.06.1994.

2 Heard.

3 Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner was intermittently appointed for fixed term varying between 2-5 months on ad-hoc basis during the period between 02.04.1990 to 31.05.1994. Some time he was appointed as Peon and sometime as chowkidar. The last ad-hoc appointment of the petitioner came to an end on 31.05.1994 where after it was not extended any further. Aggrieved therefrom, the petitioner raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. The Labour Court vide its impugned

award has decided the reference against the petitioner holding that the petitioner being an ad-hoc appointee was not entitled for regularization or for back wages. It is aggrieved from this impugned award of the Industrial Adjudicator, the petitioner has filed the present writ petition seeking directions against the respondent to reinstate him in service with full back wages.

4 Mr. J.P. Dhanda, learned counsel appearing on behalf of the petitioner has argued that the petitioner was appointed to the post of Peon after due selection by the governing body of the respondent college vide appointment letter dated 14.06.1991 and therefore according to him, the appointment of the petitioner cannot be described as an ad-hoc or a back door entry. It is true that the petitioner was appointed to the post of Peon vide appointment letter dated 14.06.1991 after following the due selection procedure but this appointment of the petitioner is of no legal consequence because the said appointment was cancelled by the respondent vide letter dated 28.08.1991 stating that the petitioner was offered appointment vide letter dated 14.06.1991 inadvertently due to factual mistake as previous incumbent was holding a lien on the said post. Consequent to cancellation of the appointment by the respondent vide its letter dated 28.08.1991, the petitioner stood relieved from the services of the respondent w.e.f. 31.08.1991. Thereafter, he had challenged the cancellation of his appointment by filing a suit for permanent injunction against the respondent before the Civil Judge. This suit for permanent injunction filed by the petitioner against the respondent challenging cancellation of his appointment given to him vide appointment letter dated 14.06.1991 was dismissed by the Civil Judge vide judgment Ex. MW-1/9 & Ex. MW-1/10. Mr. Dhanda learned counsel appearing on behalf of the petitioner does not dispute that the civil suit

filed by the petitioner for challenging the cancellation of his appointment has been dismissed by the Civil Judge. Not only that, after the appointment of the petitioner offered to him vide appointment letter dated 14.06.1991 was canceled, the petitioner was thereafter appointed by the respondent intermittently for a short period on ad-hoc basis on the post of chowkidar and the petitioner had gladly accepted to work on ad-hoc basis with the respondent after cancellation of his appointment on ad-hoc basis intermittently till 31.05.1994. None of the ad-hoc appointment of the petitioner was through a selection procedure or against a vacant post. He was appointed to the post of chowkidar/peon on ad-hoc basis from time to time depending on the need and exigencies of work in the office of the respondent. The ad-hoc appointment of the petitioner from time to time in respondent college was not made by the competent authority competent to make selection against vacant post of peon/chowkidar. The respondent college is governed by and required to follow Delhi University Act as well as statutes, ordinances, rules framed by the university for teaching as well as non-teaching staff. As per rules, every post is required to be advertised in local newspapers and names have also to be called from the Employment Exchange. The candidates against vacant post can be appointed only after going through the selection process as prescribed under the rules of the University which also include to follow the rules for reservation of post for SC, ST and other backward classes. There are any number of judgments of the Hon'ble Supreme Court in which it has been held that daily wagers and ad-hoc appointees have no legal right to ask for their regularization in service as their appointment on ad-hoc basis is contrary to the principles contained in Articles 14 & 16 of the Constitution of India.

5 Mr. Dhanda learned counsel appearing on behalf of the petitioner

has also argued that since the petitioner had already completed 730 days of service before his alleged termination w.e.f. 01.06.1994, he was entitled for regularization in the service of the respondent in terms of the decision of the Executive Committee contained in office order dated 24.06.1991 (Ex. WW-1/2). I have gone through this policy decision of the respondent referred and relied upon by counsel for the petitioner but on going through the same, I find that the petitioner cannot take any benefit out of this policy decision of the respondent because he had not completed 730 days service with the respondent on the cut off date mentioned in the said circular dated 24.06.1991. As per this circular only those ad-hoc appointees were entitled to be considered for regularization who had completed 730 days of service in January, 1990. The petitioner admittedly did not complete 730 days of service with the respondent in January, 1990 and therefore he is not entitled to have any benefit of the policy decision of the respondent contained in its office order dated 24.06.1991 referred and relied upon by the counsel for the petitioner. No other argument has been advanced by the counsel for the petitioner.

6 For the foregoing reasons, I do not find any illegality or perversity in the impugned award of the Industrial Adjudicator that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. This writ petition therefore fails and is thereby dismissed in limine. However liberty is granted to the petitioner to ask for wages from the respondent for the period he had actually worked, if not already paid.

AUGUST 28, 2009
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S.N.AGGARWAL, J