

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

+ **W.P.(C) No. 8520/2007**

% **Date of Decision: 18 September, 2009**

GAURI SHANKER PETITIONER
! Through: Mr. A.K. Soni, Advocate.

VERSUS

\$ MUNICIPAL CORPORATION OF DELHI RESPONDENT
^ Through: Ms. Saroj Bidawat, Advocate.

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 petitioner in this writ petition seeks to challenge an industrial award dated 07.09.2007 in I.D. No. 101/06/03/96 by which he has been awarded compensation of Rs. 80,000/- in lieu of his claim for reinstatement and back wages for alleged termination of his services by the MCD (respondent herein) w.e.f. 19.07.1995.

2. The petitioner had worked as Sewer Cleaning Machine (SCM) Driver with the respondent as daily wager for short spell of time as and when the services were required during the period between 10.01.1987 till 08.03.1995. His appointment as SCM Driver as daily wager came to an end on 08.03.1995. There is no dispute about this fact. The petitioner was, however, again employed by the respondent as Work Assistant on daily wage basis on muster roll w.e.f. 09.03.1995. His said employment continued till 18.07.1995 and thereafter he ceased to be in the

employment of the respondent. No letter of termination was given to him obviously because he was a daily wager. The petitioner however aggrieved by non-continuance of his employment, raised an industrial dispute purporting it to be illegal termination which was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication. The Labour Court has found the termination of the petitioner to be illegal and has, therefore, awarded a compensation of Rs. 80,000/- in lieu of his claim for reinstatement and back wages. The petitioner in this writ petition is aggrieved by the amount of compensation awarded to him by the Industrial Adjudicator.

3. Mr. A.K. Soni, learned counsel appearing on behalf of the petitioner, submits that the compensation of Rs. 80,000/- awarded by the Court below for illegal termination of services of the petitioner is quite inadequate and needs to be enhanced by this Court.

4. I have given my anxious consideration to the submissions made by the learned counsel appearing on behalf of the petitioner for enhancement of compensation and I have not been able to persuade myself to agree with his submissions. It is a matter of fact that the petitioner had hardly worked for about four months as daily wager on the post of Work Assistant which led to raising of industrial dispute by him for his alleged termination. The appointment of the petitioner with the respondent was not made after following a procedure for regular appointment. His appointment was a back-door entry and was in contravention of provisions of Articles 14 & 16 of the Constitution of India.

5. In **Secretary, State of Karnataka & Others vs Umadevi & Others 2006 (4) Scale Page 197**, it was held by the Hon'ble Supreme Court as under:

“the workman who has been employed against the rules and procedures are not entitled for regularization in the service. As has been held that while appointments are made on temporary or casual, courts are swayed by the fact that the concerned person has worked for sometime and in some cases for a suitable length of time. It is not as if a person who so accept the engagement either temporary or casual in nature is not aware of the nature of his employment, he accepts the employment with the eyes open, it may be true that he is not in a position to bargain. It would not be appropriate to jettison the constitutional scheme of employment. This would be creating another mode of appointment which is not possible.”

6. It is an admitted fact on record that the petitioner was a daily wager with the respondent. It is also an admitted fact that he had worked for four months as Work Assistant before termination of his services by the respondent w.e.f. 19.07.1995. Since the respondent has not challenged the impugned award, this Court need not go into the question of correctness of the findings contained in the said award regarding validity of termination of services of the petitioner.

7. In **Telecom District Manager and Others Vs. Keshab Deb, (2008) 8 SCC 402**, it has been held by the Hon'ble Supreme Court as under:

“Even in a case where an order of termination is illegal, an automatic direction for reinstatement with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed years of service as envisaged under Section 25F of the the Industrial Disputes Act. He could not have been directed to be regularized in service or granted a temporary status.”

8. In the present case, the petitioner has worked with the respondent on the post of Work Assistant as daily wager for about four months before termination of his services and he has been awarded compensation of Rs. 80,000/-, which by no means, can be said to be inadequate. This compensation amount of Rs. 80,000/- is stated to has already been paid by the respondent to the petitioner.

9. In view of what has been stated above, I do not find any infirmity, illegality or perversity in the impugned award that may call for an

interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed leaving the parties to bear their own costs.

SEPTEMBER 18, 2009
'BSR'

S.N.AGGARWAL, J