

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

+ **Writ Petition (Civil) No. 297/2009**

Reserved on : 22.05.2009

Date of Decision : 25.05.2009

Shri Bijender Kumar

.....Petitioner

Through: Mr.Anuj Aggarwal, Advocate

Versus

Municipal Corporation of Delhi

..... Respondent

Through : Ms.Reena Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 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.

1. The petitioner in the instant writ petition has challenged the award dated 11th May, 2007 in ID No. 190/2006/2004 passed by the learned Labour Court No. II, Karkardooma Courts, Delhi. The aforesaid award has been challenged on the ground that the learned Labour has held the termination of the services of the petitioner to be illegal and unjustified, but the learned Labour Court instead of granting the petitioner the benefit of reinstatement and continuity of service with full back wages, has directed payment of only a sum of Rs.50,000/- as lump sum compensation.

2. I have heard the learned counsel for the petitioner and perused the record.

3. Briefly stated the facts of the case are that appropriate government had made a reference in exercise of its power under

Section 10(1) (c) and 10 (1) (d) read with Section 12 sub section 5 of the Industrial Disputes Act, 1947 on 12th May, 2003 to the Labour Court on the following lines:

“Whether the services of Sh. Bijender Kumar, S/o Sh. Mam Chand, 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. Pursuant to the aforesaid reference, the petitioner filed his statement of claim wherein it was stated that he was employed as a Chowkidar w.e.f 20th March, 1997 on monthly basis, his name was placed on Muster Roll and he was treated as daily rated casual worker by the respondent. It is alleged that his services were terminated vide office order dated 2nd November, 2001 which was served on him on 19th November, 2001. It was alleged that as the petitioner had completed 240 days of continuous service with the respondent in a span of twelve calendar months, and therefore, before termination the provisions of Section 25 F, G and H read with rule 76 and 77 of the Industrial Disputes Act, 1947 were not complied with. Since a demand notice dated 10th April, 2003 sent by the petitioner to the respondent failed to bring any desired result he was constrained to approach the appropriate government for the reference.

5. The respondent in its WS has admitted that the petitioner was employed by them as a daily rated worker, however, it was stated that as the petitioner was engaged on the basis of false documents having the forged signatures of the officials of the respondent. He had also succeeded to place on record a false office order dated 10th July, 1992 pertaining to one Mr. Vijender Singh workman. It was stated that the petitioner had given a wrong date of birth, and accordingly, when he

was engaged his age was only 13 years and his services were disengaged after taking approval of the appropriate authority.

6. The learned Labour Court after permitting the parties to adduce their evidence passed a detailed and reasoned award holding the termination of the petitioner to be illegal and unjustified by observing that there were 64 employees who were engaged at the zonal level who were class IV employees. It was held by it that they were appointed without obtaining the approval of the competent authority, namely, Additional Commissioner/Commissioner, MCD. The name of the petitioner appeared in the said list of employees at Serial No. 10. Further, it took into consideration document as Ex. MW1/6 which shows that disengagement of the services of the petitioner was done after obtaining prior approval of the competent authority. The petitioner had also admitted in his cross examination that although Additional Commissioner, MCD is competent authority for giving the sanction for engagement on daily wagers, however, in his case no such sanction was obtained. The learned Labour Court came to the conclusion that the services of the petitioner were terminated without complying with the provisions of the I.D. Act therefore, it held that his services have been terminated illegally. But while considering the question as to whether the petitioner should be granted benefit of reinstatement and continuity of service or one time compensation in lieu thereof, the learned Labour Court referred to a number of judgments of the Apex Court and the High Court cited by the rival sides and decided to take more pragmatic view that the latest trend of the Supreme Court is that instead of directing reinstatement the Courts have been encouraged to grant one time lump sum compensation. It has referred to specifically a Division Bench judgment of this Court in

case titled ***Pramod Kumar & Anr. Vs. The Presiding Officer & Anr.*** 2006 LLR Delhi 302 (DB) wherein the petitioner was granted a relief of compensation to the tune of Rs.50,000/- along with the interest @8%. In the instant case also instead of granting the benefit of reinstatement and continuity of service the learned Labour Court has granted one time lump sum compensation. This is primarily on account of the reason firstly the petitioner himself has admitted in cross-examination that he was daily wager and secondly even this appointment of the petitioner was not done on the basis of the sanction granted by the competent authority. It was observed that in case the petitioner was daily wager and not appointed on the sanction of a competent authority then ***Secretary, State of Karnataka Vs. Uma Devi*** AIR 2006 SC 1806 would come in his way his service could not be ever regularized. Accordingly the aforesaid compensation of Rs.50,000/- was granted which this Court feels is just, fair and reasonable. Merely because in some other case higher compensation has been granted in some reported cases will not be in itself to be ground for enhancing the compensation in this case. Moreover this is primarily a discretion to be exercised by the Labour Court which has exercised the same by taking some relevant and important factors.

7. Further the aforesaid compensation has been recovered by the petitioner by instituting proceedings under Section 33-C-1 of the Industrial Disputes Act, 1947 after the passing of the award. Yet after having obtained the complete benefit in terms of the award the petitioner has now woken up after expiry of almost more than a year and a half and file the present writ petition for seeking the direction to reinstatement and continuity of service. It seems that the very fact that the petitioner had recovered the money by instituting proceedings

under Section 33-C-I of the Industrial Disputes Act, 1947 and having chosen to accept the award by not assailing it as expeditiously cannot be permitted to raise a state claim. The possible and certainly a reasonable time within which the writ ought to have been filed is one year. The petitioner has now suddenly woken up from the slumber to challenge the award dated 11th May, 2007 with a view to extract more money from the respondent. It may be pertinent here to mention that the award has been passed on 11th May, 2007 on which date the petitioner knew that he has not been granted the benefit of reinstatement, and therefore, he ought to have challenged the award within a reasonable time from 11th May, 2007 instead of this writ petition is filed in towards the end of the December 2008 challenging the award. This lapse of a period of almost more than 1 ½ years is in my considered opinion a sufficient ground for denying the petitioner the benefit of assailing the award on the question of quantum.

8. The learned counsel for the petitioner has urged that though the award was passed on 11th May, 2007 but it was published only on 6th November, 2007, and therefore, it was after publication of the award only that the period of limitation within which the writ petition ought to be filed is to be calculated.

9. I do not agree with this proposition of the learned counsel for the petitioner that the cause of action to assail the award arises to the petitioner only after the publication of the award. The award itself is pronounced in the open court on 11th May, 2007 when the rights and obligations of the parties have been crystallized by the industrial adjudicator and if any of the parties feels aggrieved by the said crystallization of the rights it must assail the same before the appropriate forum. He cannot be expected to wait for the publication

of the award which is only a matter of formality for giving the legitimacy in the event of enforceability. Since the petitioner himself was not accepting the award, therefore, there was no occasion for him to wait for getting the award enforced. Rather the fact shows that the petitioner not only recovered the aforesaid amount pursuant to the publication but also waited for more than 1 ½ years to challenge the award which in my view is fatal to the case of the petitioner as the present writ petition gets hit by inordinate delay and laches.

10. For the reasons mentioned above, the writ petition of the petitioner is totally misconceived and accordingly the same is dismissed.

V.K. SHALI, J.

MAY 25, 2009
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