

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

+ **W.P.(C)1511/2000**

% **Date of decision: 3rd June, 2010**

MUNICIPAL CORPORATION OF DELHI **Petitioner**

Through: Ms. Amita Gupta, Advocate

Versus

SH. VEER BAHADUR & ANR. **Respondents**

Through: Mr. Anuj Aggarwal, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner MCD seeks a writ of certiorari quashing / setting aside
of the award dated 12th August, 1996 of the Labour Court on the following
reference:

“Whether Shri Veer Bahadur has abandoned his services or
his services have been terminated illegally and / or
unjustifiably by the Management and if so, what relief is he
entitled and what directions are necessary in this respect?”

2. The petitioner MCD though had filed a reply / written statement to the claim of the respondent no.1 workman before the Labour court but failed to lead any evidence. The Labour Court has held that the termination of the services of the respondent workman was in violation of Section 25F of the ID Act and thus illegal. Accordingly, the petitioner MCD has been directed to reinstate the respondent workman but with back wages only from the date when he had first given notice i.e. 2nd December, 1988 and till reinstatement.

3. The Labour Court found that the respondent workman joined the employment of the petitioner MCD with effect from 26th February, 1985 as a casual muster roll employee and that his services were terminated with effect from 25th May, 1986. It was held that the respondent workman having completed more than a year's service, his retrenchment without any notice pay or compensation is violative of Section 25F of the I.D. Act. The Labour Court however did not accept the vague deposition of the respondent workman that a new person was appointed or taken on the job on the same pay and that his juniors were retained in services while he was thrown out of the job. However, since the respondent workman had raised a dispute first vide notice dated 2nd December, 1988 only i.e. after nearly 2½ years of termination, he was held entitled to back wages from the said date only. The respondent workman has not challenged the award.

4. The petitioner MCD having not led any evidence before the Labour Court was held to have not made out any case of the respondent workman having abandoned his services. The petitioner MCD has also not controverted, neither before the Labour Court nor in the writ petition the factum of the respondent workman having worked from 26th February, 1985 till 25th May, 1986. The plea with respect to 240 days also was only that the respondent workman had not completed 240 days of service “in any calendar year” and not that the respondent workman had not completed 240 days of service prior to the date of his alleged termination.

5. The respondent workman has till date not filed any counter affidavit to the present writ petition. However, both, the counsel for the petitioner and the counsel for the respondent workman stated that the controversy in the present case is the same as in WP(C) No.3466/2000 on which the same counsels had addressed arguments a day earlier. They thus stated that the decision in WP(C) No.3466/2000 will govern the decision in the present writ petition also. The counsel for the respondent workman has further stated that the present writ petition has been filed after considerable delay and is liable to be dismissed on this ground also. The orders in WP(C) No.3466/2000 are also being pronounced today.

6. The counsel for the petitioner MCD relies on :-

(i) ***Manager, R.B.I., Bangalore Vs. S. Mani*** (2005) 5 SCC 100; in this case the Supreme Court found that the workmen were ticca mazdoors intermittently appointed whenever the regular Class IV employees were absent; the said ticca mazdoors were not engaged everyday or continuously and their engagement depended upon the need and they were never regarded as regular employees. The Supreme Court further held that none of the said workmen had worked for 240 days. Further during the pendency of the dispute, the parties had arrived at a settlement and in terms whereof the workmen had been reinstated. In the said factual matrix the Supreme Court observed that in law, 240 days of continuous service by itself does not give rise to a claim of permanence. It was further held that a direction for reinstatement for non compliance of provisions of Section 25F would restore the workmen to the same status which they had held when terminated and the workmen would thus continue to be ticca mazdoors meaning thereby their names would be continued in the Muster Roll and it would not bring them within the purview of a regular employees.

(ii) ***Surinder Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad*** (2006) 7 SCC 684; in this case also the workman had been appointed on a contract basis for a fixed term for carrying out the work of a specified project; they were engaged from time to time to work on different projects and when they were not appointed in a project they preferred a writ petition which was dismissed by the High Court and the matter was

taken to the Supreme Court. It was in this context that the Supreme Court relying on *Secretary, State of Karnataka Vs. Umadevi* (2006) 4 SCC 1 held that the workmen having not been appointed as per the constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. Thus, it will be seen that in this case, the matter was not considered by the Labour Court at all.

(iii) *Rajasthan Lalit Kala Academy Vs. Radhey Shyam* MANU/SC/3003/2008 laying down that relief of full back wages need not be granted automatically in every case where the Labour Court / Industrial Tribunal records the finding that termination of service of a workman was in violation of the principles of the Act. Factors like the manner and method of selection, nature of appointment, period for which the workman had worked and the delay in raising the industrial dispute were laid down as factors to be considered in grant / non grant of back wages.

(iv) *Uttaranchal Forest Development Corporation Vs. M.C. Joshi* MANU/SC/7166/2007; in this case the dispute was raised after six years of termination of service. The Labour Court granted reinstatement with 25% back wages. The Supreme Court changed the award to that of compensation in the sum of Rs.75,000/- in lieu of reinstatement and back wages, primarily for the reason of the dispute having been raised after six years.

(v) ***State of Madhya Pradesh Vs. Arjunlal Rajak*** (2006) 2 SCC 711; in this case the award for reinstatement with full back wages was modified to that for compensation of Rs.10,000/- in view of the division of the Forest Department in which the workman was employed having stood abolished.

(vi) ***Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan*** (2004) 8 SCC 161; in this case neither the Labour Court nor the High Court had given any finding on the pleas of the employment being temporary and seasonal and the evidence lead with respect to the employee's having completed 240 days of service was found to be shaky. The matter was thus remanded to the Labour Court.

(vii) ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board*** AIR 2009 SC 3004; in this case also the workman was a daily wager and had worked for about one year only, though had completed 240 days and the employer was a local authority. The Supreme Court held the relief of reinstatement with back wages to be inappropriate in the circumstances and granted compensation of Rs.50,000/-.

7. Per contra, the counsel for the respondent workman contends that the case of the petitioner MCD of the respondent workman having abandoned the work even though not proved, is no valid defence to the claim of the respondent workman. Reference is made to the judgment of the Division Bench of the Bombay High Court in ***Gaurishankar Vishwakarma Vs.***

Eagle Spring Industries (P) Ltd. (1988) 1 LLN 259 holding that even when the workman / employee is claimed to have abandoned work, an enquiry is required to be held and which has admittedly not been done in the present case. He also relies on the judgment of the Supreme Court in ***Harjinder Singh Vs. Punjab State Warehousing Corporation*** MANU/SC/0060/2010 and in ***Ramesh Kumar Vs. State of Haryana*** MANU/SC/0038/2010 where the termination of employment is found to be illegal. He also contends that in enforcement of the award, the respondent workman has already recovered amounts due till 31st August, 1998 and which fact has been concealed by the petitioner MCD in the writ petition. Reliance is placed on ***G.M. Haryana Roadways Vs. Jai Bhagwan*** MANU/SC/7291/2008 in which case the delay of 153 days in filing the SLP was not condoned for the reason of the workman having in the meanwhile been reinstated in services and the said fact having not been disclosed in the Special Leave Petition. Reference is also made to ***Shri Sukhbir Singh Vs. Union of India*** MANU/DE/0607/2009, ***Shri Bijender Kumar Vs. Municipal Corporation of Delhi*** MANU/DE/2215/2009 & ***Delhi Jal Board Vs. Its Workman*** MANU/DE/1112/2009 on the aspect of delay and laches.

8. It being the admitted position that the engagement of the respondent workman was as a daily wager, his reinstatement would also be as a daily wager only. The respondent workman had in his claim made averments of

being discriminated and doing same work as the regular employees getting better emoluments but not relief in that respect has been granted by the Labour Court. The said part of the award is not under challenge before the Labour Court.

9. The view of the Supreme Court in *Harjinder Singh* and *Jagbir Singh* (supra) both recent judgments of two judge benches, in one case is in favour of reinstatement and in another case for compensation. However, in *Harjinder Singh* (supra) where the reinstatement was canvassed, the workman had been given a designation, was given an increment and in these circumstances was held to be entitled to reinstatement. In *Jagbir Singh* (supra) where compensation was granted, the workman was a daily wager and long time had elapsed since he had ceased to work for the employer.

10. In the present case, the factors which lead me to hold that the respondent workman is not entitled to reinstatement but only to compensation are:-

- (i) Reinstatement under the award also is as a daily wager and such reinstatement will not put an end to the dispute / controversy and is likely to lead to further disputes.
- (ii) The dispute was admittedly raised by the workman after two and a half years of termination of his employment.

(iii) The respondent workman has now worked for approximately 24 years elsewhere. Significantly, inspite of the writ petition having remained pending since the year 2000, no application under Section 17B has been filed.

All this leads me to believe that the respondent workman has been working elsewhere.

11. I have in WP(C) No.3466/2000, in which the workman had also been receiving payment under Section 17B of the I.D. Act held lumpsum compensation in lieu of reinstatement and back wages of Rs.1,50,000/- to be appropriate. I have further held that the respondent workman in that case will not be liable to refund any amount received or due under Section 17B of the I.D. Act. However, in the present case, no order under Section 17B has been made, but the respondent workman herein has received back wages and which the workman in WP(C) No.3466/2000 had not received. Else the respondent workman in both cases has worked for just about one year and on a temporary basis. In the circumstances, the same compensation of Rs.1,50,000/- is found appropriate in the present case also.

12. Accordingly, the writ petition is partly allowed. Instead of the relief of reinstatement, the respondent workman is held entitled to lumpsum compensation of Rs.1,50,000/- from the petitioner MCD. The petitioner

MCD to pay the said amount within six weeks herefrom failing which it shall incur simple interest at 9% per annum.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd June, 2010
Gsr..