

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

+ **WP(C) 3466/2000**

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

MUNICIPAL CORPORATION OF DELHI PETITIONER
Through: Ms. Amita Gupta & Mr. Parveen
Kumar, Advocates

Versus

SH. RANBIR & 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 October, 1998 of the Labour Court on the following
reference:-

“Whether the services of Sh. Ranbir Singh 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?”

2. The petitioner MCD failed to appear before the Labour Court and
was proceeded against *ex parte*. The Labour Court has held that the

termination of services of the respondent no. 1 workman was in violation of Section 25F of the I.D. Act and thus illegal. The Labour Court has further observed that there is no compelling reason for denial of full back wages to the respondent workman. Accordingly, the petitioner MCD has been directed to reinstate the respondent workman with full back wages w.e.f. 26th July, 1991 till reinstatement, at the rate which was being given to casual and daily rated Mali/Beldar in Horticulture Department under the Minimum Wages Act as revised from time to time by the Delhi Administration.

3. The Labour Court found (and it is not controverted by the petitioner MCD in the writ petition) that the respondent workman joined the employment of the petitioner MCD w.e.f. 26th March, 1990 as a Mali/Beldar in the Horticulture Department; that he was being treated throughout as a casual/Muster Roll/daily rated worker and was being paid wages under the Minimum Wages Act as revised from time to time for casual unskilled workers; that the respondent workman was last getting Rs.915/- per month while his counterparts regularly employed as Mali were being paid wages in the graded pay scale of Rs.750-940 with usual allowances and other benefits and which were being denied to the respondent workman though doing similar work; that the services of the respondent workman were terminated w.e.f. 26th July, 1991 without assigning any reason.

4. The Labour Court held that the I.D. Act does not make any distinction between the casual workman and other workman; that retrenchment under the Act is wide enough to cover cases of termination of services for any reason whatsoever; that striking off of the name from the Muster Roll would be covered by retrenchment; that the respondent workman having continuously worked from 26th March, 1990 to 26th July, 1991 for a period of more than one year, the provisions of Section 25F were applicable to him even as a daily rated worker but were not followed. The Labour Court however found that the respondent workman had failed to prove that the petitioner MCD proposed to take into its employment any person without giving any opportunity to the respondent workman for re-employment and held that the averments of the respondent workman of not getting equal pay for equal work were not relevant for decision of the reference. The Labour Court finding the termination of employment to be illegal, held that it has to be followed by direction for reinstatement with full back wages unless there are any compelling reasons for denial; the Labour Court did not find any reason for denial of full back wages. Accordingly, the award aforesaid was made. It was however held that the claim of the petitioner for regular pay scale was beyond the term of reference. The respondent workman has not challenged the award.

5. The petitioner MCD has in the writ petition pleaded that the respondent workman being a casual/Muster Roll employee, the concept of

retrenchment cannot be extended to him and that the respondent workman had stopped attending to his duties w.e.f. 26th July, 1991 and made a demand for the first time vide notice dated 2nd July, 1994 i.e. after a period of three years.

6. The counsel for the petitioner MCD has contended that even though the petitioner MCD was *ex parte* before the Labour Court but the Labour Court erred in holding the respondent workman to be in continuous employment of the petitioner MCD for over one year. It is contended that the onus to prove that he had worked for more than 240 days in the year preceding his termination was on the respondent workman and reliance by the Labour Court on the affidavit alone of the respondent workman in this regard is not proper. Reliance in this regard is placed on ***The Range Forest Officer Vs. S.T. Hadimani*** (2002) 3 SCC 25. I may however notice that the petitioner though has raised the said argument but not laid any foundation/basis therefor in the memorandum of the writ petition. The petitioner has nowhere denied that the respondent workman was employed with it as found by the Labour Court and has not pleaded that if not from 26th March, 1990 to 26th July, 1991, then from when to when was the respondent workman with the petitioner. Moreover in the judgment relied upon by the petitioner, there was a denial by the employer of the plea of the workman and it was in that context that the observations were made. However, in the present case there was no denial on the part of the

petitioner MCD of the averments in this regard of the respondent workman, neither before the Labour Court nor before this Court. The said contention of the petitioner is thus untenable.

7. The counsel for the petitioner next 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 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/-.

8. The counsel for the petitioner MCD has further drawn attention to the order dated 7th August, 2009 under Section 17 B of the Act in these proceedings. I may also mention that the petitioner MCD with effect from 25th August, 2009 has been taking work from the respondent workman in lieu of wages paid to him under Section 17 B of the Act.

9. Per contra, the counsel for the respondent workman has contended that the present petition has been filed after 1½ years of publication of the award and ought to be dismissed on the ground of laches. He further contends that the petitioner MCD even though ex parte before the Labour Court has before this Court also not disputed the factum of the respondent workman having worked for 240 days. He contends that the case of the petitioner MCD is of the respondent workman having abandoned the work and in which case also as per the judgment of the Division Bench of the Bombay High Court in *Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Ltd.* (1988) 1 LLN 259, the petitioner was required to hold an enquiry and which has admittedly not been done. He also relies on recent judgments 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 Supreme Court has emphasized the need for reinstatement where the termination of

employment is found to be illegal. It is further his contention that the judgment of the Supreme Court in *Umadevi* case (supra) was in a different context as held by a Single Judge of this Court in *Bharat Sanchar Nigam Ltd. Vs. Satyavir* MANU/DE/0681/2008. Reliance is also placed on *Management of Electric Control Switchboards Vs. Presiding Officer* MANU/DE/0211/2009 laying down that burden of proof of the plea of abandonment of service is on the employer. It is contended that the petitioner MCD has not lead any evidence in this regard.

10. As observed above by me, all that the Labour Court has done in the present case is to direct the petitioner MCD to take back the respondent workman as a daily wager and to pay to him back wages at the rate of minimum wages as paid to daily wagers. The Labour Court has expressly declined the relief of regularizing the employment of the respondent workman in future or of payment of back wages as of a regular employee to the respondent workman. The said part of the award is not under challenge before this Court.

11. In the aforesaid circumstances, even if the award of reinstatement were to be maintained, the respondent workman will neither have continuity of service nor the consequential benefits of seniority. On enquiry, it was informed that the respondent workman is about 40 years of age and thus has substantial service left. As far as the reliance by the counsel for the petitioner on *Umadevi* (supra) is concerned, the Supreme

Court in *Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karmchari Sanghatana* (2009) 8 SCC 556 has reiterated that the powers of the Labour Court are very wide and once an unfair Labour practice on the part of the employer is established, the Labour Courts are empowered to issue preventive as well as positive direction to the erring employer and such issues pertaining to unfair labour practices were not referred to or considered in the *Umadevi* case (supra). However the fact remains that in the present case, the Labour Court has expressly given a finding and which remains unchallenged that the petitioner MCD has not made out a case of any other person similarly situated as respondent workman having been regularized. Similarly there is no finding of any unfair labour practice having been followed. Thus all that has to be considered is whether in the established facts of the respondent workman having been employed as the daily wager for a period in excess of 240 days entitles him to reinstatement as a daily wager or to be compensated for the established illegality of the termination of his employment.

12. 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.

13. 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 three years of termination of his employment.

(iii) The respondent workman has now worked for approximately 19 years elsewhere. The application under Section 17B also was filed after this petition has been pending for nearly nine years.

All this leads me to believe that the respondent workman must have been working elsewhere in the interregnum, though now for the last six months he has again joined the petitioner MCD.

14. Considering that the respondent workman had worked for just about one year and on a temporary basis and has not been granted the relief of reinstatement as a regular employee, I consider the compensation of

Rs.1,50,000/- to the respondent workman to be sufficient besides the amount already received by him or due to him in terms of the order under Section 17B of the Act. It is further clarified that though payment under Section 17B has been ordered at minimum wages but the respondent workman would not be liable to refund any amount received in excess of the last drawn wages for the reason that the respondent workman has worked for the petitioner MCD.

15. Accordingly, the writ petition is partly allowed. Instead of the relief of reinstatement with back wages, the respondent workman shall in addition to the amounts already received or due in terms of the order under Section 17B of the Act shall be entitled to a further sum of Rs.1,50,000/- from the petitioner. The petitioner MCD to pay the said amount within six weeks herefrom failing which the same shall incur simple interest at 9% per annum.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd June, 2010
gsr