

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

+ **W.P.(C) No.3003/2001**

% **Date of decision: 7th May, 2010**

BALBIR SINGH

..... Petitioner

Through: Mr. Anil Mittal & Mr. Prashant Katara,
Advocates.

versus

**PRESIDING OFFICER
LABOUR COURT & ANR.**

..... Respondents

Through: Mr. J. N. Aggarwal & Mr. Mayank
Joshi, Advocates for R-2.

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 workman impugns the award dated 3rd November, 2000 of
the Labour Court on the following reference:

“Whether the services of Sh. Balbir 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 Labour Court, in the award impugned in this petition has found that the petitioner workman had received apprenticeship training with the respondent no.2 DTC; that after successful completion of training in October, 1987, the petitioner workman was engaged on daily wage basis; initially he was engaged as a Assistant Fitter for 89 days w.e.f. 29.03.1988 and subsequently from 2nd August, 1988 to 28th October, 1988 and then from 13th November, 1988 to 4th February, 1989. The services of the petitioner workman were however not regularized and the petitioner workman not absorbed as he was declared medically unfit for the job. It was the case of the petitioner workman before the Labour court that though persons with greater disability than his were working as Assistant Fitter and on various other jobs in respondent no.2 DTC but he was not taken as Assistant Fitter. The Labour Court held that if petitioner workman was dissatisfied with his medical examination then he could have made a representation to the respondent no.2 DTC and could have made a request to be examined by another medical board of the respondent no.2 DTC and the Labour Court could not form an opinion that the others named by the petitioner workman were having more disability than the petitioner workman or that the petitioner workman was discriminated against. The Labour Court held that the petitioner workman could not claim any right for regular appointment, as the regular appointment was to be done in accordance with the rules including the medical fitness of the candidate.

The Labour Court also held that even if the total number of days for which the petitioner workman had worked with the respondent no.2 DTC are counted, it could not be said that the petitioner workman had worked for 240 days and thus was required to be paid retrenchment compensation if his services were terminated. The Labour Court accordingly decided in favour of the respondent no.2 DTC and against the petitioner workman.

3. Aggrieved therefrom the present petition has been filed. After the completion of pleadings, the petition, without issuing any rule has been listed for hearing in the '*After Notice Miscellaneous Matters*' category.

4. The counsel for the petitioner workman has argued only on the basis of discrimination. It is contended that the petitioner workman was entitled to be absorbed in the employment of respondent no.2 DTC in the persons under disability category and has been wrongly rejected/declared as medically unfit. Attention is invited to the application filed by the petitioner workman before the Labour Court for summoning the records of employment of several persons in respondent no.2 DTC and in which application the disability from which all the said persons are suffering is also stated. The counsel contends that the petitioner workman has been declared medically unfit for the reason of the distal phalanges of left index finger and left thumb being amputated. It is argued that the said injury had been suffered in childhood and notwithstanding the said injury, the

petitioner workman was first taken as a apprentice with the respondent no.2 DTC, successfully completed his apprenticeship and then made to work as aforesaid with the respondent no.2 DTC. The contention of the counsel for the petitioner workman is that all the aforesaid shows that the aforesaid disability, which is minimal in nature, does not come in the way of the petitioner performing his duties as a Assistant Fitter and the petitioner workman is thus entitled to be absorbed in the employment of respondent no.2 DTC, specially when the respondent no.2 DTC has been employing persons with much higher degree of disability than the petitioner.

5. It was enquired from the counsel for the petitioner workman as to whether the aforesaid was the subject matter of the industrial dispute which was referred to the Tribunal. The reference aforesaid would show that the dispute referred was of alleged illegal termination from employment and not of discrimination or of absorption in the employment of respondent no.2 DTC. The reference was not as to whether the petitioner workman was entitled to employment in respondent no.2 DTC (even though I entertain doubts if at all such dispute could be referred). It was thus enquired from the counsel as to on what basis the arguments before this Court are being addressed. I may notice that notwithstanding the reference not being to the said effect, the petitioner workman argued the said case before the Labour Court also and the Labour Court has in the award impugned in the petition, rejected the said claim of the petitioner workman on the ground of the

remedy with respect thereto being of seeking examination by another medical board.

6. The Labour Court/Industrial Tribunal gets jurisdiction to decide only what is referred to it; it has no inherent jurisdiction to decide disputes or all the disputes between the parties, as a Civil Court has. Thus, the only question which the Labour Court was to decide was whether the services of the petitioner workman had been terminated illegally. However what transpires is that the petitioner workman was not in the service of the respondent no.2 DTC and hence the question of illegal termination does not arise. The scope of the present writ petition also thus has to be confined to the reference and the finding thereon only and not to the findings, even if any in the award of the Labour Court, on matters not referred to it. The counsel for the petitioner workman could not justify the basis on which the arguments of discrimination was being raised and could not show as to how the said dispute was referred to the Labour Court.

7. The counsel however sought to contend that since the petitioner workman had been working with the respondent no.2 DTC, his services could not be dispensed with without compliance with Section 25F of the Industrial Disputes Act, 1947. Attention of the counsel was invited to the finding in the award that the petitioner workman had not worked for a total of 240 days even. The said finding is a finding of fact. This Court, in the exercise of powers under Article 226 of the Constitution, would interfere with a finding of fact only if shown to be without

any evidence or in ignorance of relevant evidence or being so perverse, which no reasonable person could have reached on the material existing on the record. No such case has been made out. In fact the petitioner workman is unable to show anything wrong in the finding of the Labour Court of the petitioner workman having not worked for 240 days.

8. There being no letter of appointment of the petitioner workman and the petitioner workman having not been found to have worked even for 240 days in the year preceding the dispute and having been found to have worked only intermittently for the respondent no.2 DTC for a period of 89 days each time, is thus not an employee of the respondent no.2 DTC and hence the question of the respondent no.2 DTC illegally terminating his employment does not arise.

9. The counsel for the respondent no.2 DTC has further contended that since the petitioner workman was not an employee of the respondent no.2 DTC, the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 do not apply to the petitioner workman.

There is no merit in the petition; the same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

7th May, 2010

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