

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

+

**W.P.(C) No.3586/2003**

%

**Date of decision: 12<sup>th</sup> March, 2010**

**PAPPU**

..... Petitioner

Through: Mr. H.K. Chaturvedi with Ms. Anjali  
Chaturvedi, Advocates.

Versus

**THE MANAGEMENT OF M/S RAJIV AUTO MOBILES  
WORKSHOP & SHOWROOM & ANR**

.....Respondents

Through: Mr. S.P. Gautam, Advocate.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

- |    |                                                                          |     |
|----|--------------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may<br>be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                   | YES |
| 3. | Whether the judgment should be reported<br>in the Digest?                | YES |

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner workman seeks quashing/setting aside of the award dated 21<sup>st</sup> March, 2002 on the following reference:-

“Whether the termination of services of Shri Pappu is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

in favour of the respondent employer on the ground that the appointment of the petitioner was contractual within the meaning of Section 2 (oo)(bb) of the Industrial Disputes Act.

2. It was the claim of the petitioner workman before the Labour Court that he had been employed with the respondent employer for two years as a mechanic and his last drawn salary was Rs.750/- p.m.; that he was w.e.f. 1<sup>st</sup>

May, 1989 entitled to wages at Rs.848/- but was not given the same inspite of repeated demand; rather his said demand annoyed the management and when he went for work on 24<sup>th</sup> March, 1990, he was asked to work on contract basis afresh after terminating his old services; that on his refusal to agree to the same he was terminated from services.

3. The written statement of the respondent employer was/is that the petitioner workman was appointed on 22<sup>nd</sup> August, 1988 at a salary of Rs.562/- p.m. but his last drawn salary was Rs.750/- p.m.; that the petitioner workman was not entitled to wages at the rate of Rs.848/- p.m.; that the petitioner workman was appointed on a temporary post for a period of three months only and which was extended from time to time and lastly on 21<sup>st</sup> December, 1989 and expired on 21<sup>st</sup> March, 1990; thus the petitioner workman was removed from his service w.e.f. the closing hour on 21<sup>st</sup> March, 1990 and it was a termination by way of contract of employment for a specific period within the meaning of Section 2 (oo)(bb) (supra) and was not a case of retrenchment or dismissal. It was also pleaded that a letter dated 21<sup>st</sup> March, 1990 to this effect was also served on the petitioner.

4. The matter came up first for hearing on 8<sup>th</sup> March, 2010; it was enquired from the counsel for the respondent employer as to whether an employer, taking advantage of Section 2 (oo)(bb) of the Act employ all persons on contract for specified period, so as to be relieved of the provisions of the ID Act. Though the counsel for the respondent employer answered in

the affirmative but sought time to satisfy. It was further enquired whether it was not incumbent on an employer, to be entitled to avail Section 2 (oo)(bb) of the Act, to establish that the requirement was temporary or for a specified project only. It was further put to him that it appeared to this Court that if the job was of a perennial nature, the employer could not employ therefor under Section 2 (oo)(bb) of the Act. On 10<sup>th</sup> March, 2010 the counsel for the respondent employer invited attention to the letter dated 22<sup>nd</sup> August, 1988 of appointment of the petitioner workman. Some of the terms of the said letter relevant for the present purposes are as under:-

- “2. You have been appointed for three months on temporary basis. Your employment will be terminated *ipsofacto* after completion of three months until unless the period is not extended for further time. You will be informed that the period of your services will be extended. If your services will be extended for more than 3 months, then your services will be terminated *ipsofacto* after the completion of said period in like manner, your temporary appointment can be extended for two years.
3. If your performance in the employment will be found satisfactory during the period of your employment, then you will be kept on permanent basis on the same post, but for this you have to take written orders from the management and further till you will not get that written orders, you will not be treated on the job on permanent basis.
4. After appointing permanent, the services can be terminated by either of the party by giving one month notice or in lieu of notice pay.

After receiving a notice from you regarding termination of your services, the management can terminate your services prior to the completion of the notice period and will pay the salary for the balance period of notice.

8. For misconduct you could be suspended during the enquiry and if the charges will be proved, you would not be entitled for any suspension allowance for wages for the suspension period.
9. Your services can be transferred to any branch of the management in Delhi or anywhere in India. While transferring your services, you and your family including your wife, children and dependent parents will be entitled for 2<sup>nd</sup> class fare of train and three days time which will not include the travelling hours will be paid.
11. You will be retired from your services at the age of 55 years.”

5. The counsel for the respondent employer also relies on letters dated 21<sup>st</sup> December, 1988, 21<sup>st</sup> March, 1989, 19<sup>th</sup> June, 1989, 21<sup>st</sup> September, 1989 and 21<sup>st</sup> December, 1989 whereunder the contract was extended each time for a period of three months. In each of the said letters it is mentioned “*Since the vacancy against which you were appointed is likely to continue further for a period of three months, your appointment is extended for a period of three months up to ..... on the same terms & conditions as contained in the letter dated 22<sup>nd</sup> August, 1988 of your appointment.*” In the last order dated 21<sup>st</sup> March, 1990 it is stated that the petitioner workman was kept on temporary employment extended from time to time and his services will stand terminated on 21<sup>st</sup> March, 1990.

6. The counsel for the respondent employer also invites attention to the evidence led before the Labour Court. In the said evidence the petitioner workman had stated that he was not given any appointment letter and was appointed on a regular basis. However in his cross examination he identified

his signatures on the appointment letter and the extension letters (supra) though stated that he was not given copies of any of those. The witness of the respondent employer was also put in cross examination that the said letters were not given to the petitioner workman and his signatures only were obtained on the same and that the petitioner workman is illiterate and could only write his name.

7. I have enquired from the counsel for the respondent employer whether the respondent employer has led any evidence whatsoever before the Labour court of the requirement of the services of the petitioner workman being of temporary nature or being against any temporary vacancy. The counsel for the respondent employer while fairly admitting that no such evidence has been led, contends that it was not the case of the petitioner workman that the requirement was of a permanent nature and was camouflaged into temporary. He contends that the petitioner workman has raised the dispute of his having been terminated owing to having made a demand for certain allowances and has not been able to prove the case of his being entitled to any allowance or having demanded the same. He contends that in the circumstances, there was no occasion for the respondent employer to lead any evidence on this aspect. In any case his contention is that all this is irrelevant; that the appointment being for a fixed period, the employer is fully covered by Section 2 (oo)(bb) of the Act and the termination of employment of the petitioner thus cannot be a retrenchment requiring applicability of Section 25 F of the Act. He further contends that there was no motive for the respondent employer to violate

Section 25 F of the Act in as much as it would have entailed hardly any monetary element. He relies on *Life Insurance Corporation of India Vs. Raghavendra Seshagiri Rao Kulkarni* (1997) 8 SCC 461, *Secretary, Ministry of Works & Housing Govt. of India Vs. Mohinder Singh Jagdev* (1996) 6 SCC 229 & *Municipal Council, Samrala Vs. Sukhwinder Kaur* (2006) 6 SCC 516.

8. Per contra, the counsel for the petitioner workman relies on the terms of the appointment letter to contend that it is indicative of the requirement of the respondent being of the permanent nature. He further contends that the petitioner workman having worked continuously for the respondent employer from 22<sup>nd</sup> August, 1988 to 24<sup>th</sup> March, 1990 is entitled to the benefit of Section 25 F and is not covered by Section 2 (oo) (bb) of the Act. Strong reliance is also placed on the fact that the witness of the management has in his cross examination admitted that the petitioner employee worked from 22<sup>nd</sup> August, 1988 to 24<sup>th</sup> March, 1990 i.e. beyond the date of 21<sup>st</sup> March, 1990 till when the contractual employment of the petitioner workman is stated to be. It is contended that the award also in para 7 has held the petitioner workman to have worked for the respondent employer till 24<sup>th</sup> March, 1990. Reliance in this regard is placed on *Mohan Lal Vs. The Management of M/s Bharat Electronics Ltd.* AIR 1981 SC 1253 where the probation period was up to 8<sup>th</sup> September, 1974 but the services were terminated w.e.f. 19<sup>th</sup> October, 1974. It was held that from 8<sup>th</sup> September, 1974 to 19<sup>th</sup> October, 1974 the workman

was not on probation and termination of service without following Section 25F was illegal.

9. I remain unsatisfied on the queries raised to the counsel for the respondent. The provisions of Section 2 (oo) (bb) of the Act inserted w.e.f. 1984 cannot be permitted to make the beneficial provisions of the Act redundant. My research shows that the Division Bench of this court in ***PWD thr. Dy. Dir. Horticulture Vs. Satya Pal*** MANU/DE/9189/2006 has held that what is excluded from the definition of retrenchment is the termination of the service of workman as a result of the contract of employment being terminated under a stipulation in that behalf contained therein. In that case also short time work orders for a period of three months each time were issued for a period of nearly three years. The Division Bench of this court held that from the circumstances it was apparent that the device of issuing work orders was to satisfy the letter of law as contained in Section 2 (oo) (bb) but in fact it was nothing but an employment on the continuous basis. It was further held that the purposes for which Section 2 (oo) (bb) was introduced was to avoid saddling an employer with the liability under Section 25F where a worker had been engaged for a very short period of say two or three months; it was not meant to be invoked in a situation where the worker is in continuous employment for three years as in that case. It was further held that if one were to interpret Sections 2(oo)(bb) in a manner as suggested by the employer in that case, it would permit the law to be misused to avoid a statutory liability. It was reiterated that ID Act is intended to protect a

workman whose services have been continuously engaged for a considerable period of time and the provision of Section 2(oo)(bb) have to be interpreted in this background. Reliance was placed on *Haryana State F.C.C.W. Store Ltd. Vs. Ram Niwas* MANU/SC/0556/2002 laying down that the idea of introducing Section 2(oo)(bb) in the ID Act was to meet a situation where a worker is engaged for a very short time, in that case for two weeks, for keeping guard over stocks lying in the open area. It was held that the said judgment which turned on its facts cannot apply to the facts where the worker has been employed for 3 years continuously.

10. I find that wherever the benefit of Section 2 (oo)(bb) has been allowed to the employer, as also in the judgments relied upon by the respondent employer or returned to the award, the courts have found it established on record that the requirement was of a temporary or a seasonal character or the appointment was not against a post or not in accordance with rules of regular appointments. No such benefit can be given where it has been used as a camouflage for a regular employment. It is not the case of respondent that there are any rules for regular appointment which have not been followed in appointment of the petitioner.

11. I find the contract in the present case to be a device used by the respondent employer for its protection. The petitioner workman is admittedly a unskilled labour. Though the counsel for the respondent employer states that the letter of appointment on the record of the Labour Court is in Hindi

language but the facts remains that it is highly unlikely that such detailed letter running into several pages would have been the result of negotiations of a contract of employment. The petitioner workman qua the respondent employer had no bargaining power and the version the petitioner that he was merely made to sign all the said documents and no copy thereof given to him is quite believable. The admission in cross examination that the petitioner worked till 24<sup>th</sup> March, 1990, while as per document he was discharged on 21<sup>st</sup> March, 1990 is also indicative of the respondent employer obtaining signatures of the petitioner on whatever document was convenient. What will fall within the meaning of Section 2 (oo) (bb) is when the employee joins with a full understanding that he was not being employed but was on a temporary assignment. In the present case from the statement of claim, the petitioner workman does not even appear to be aware of the said documents. Had the said been in the knowledge of the petitioner workman the petitioner workman would have certainly if not referring to the same build a case to meet the same. I also do not agree with the counsel for the respondent employer that there was no occasion for the respondent employer to adduce evidence of the requirement of the employer being temporary. The petitioner workman had approached with a case of being a regular employee and the defence of the respondent employer was of Section 2(oo)(bb). It was in the circumstances incumbent on the employer to establish its case thereunder and to satisfy all ingredients thereof. If the argument of the respondent, of there being no plea of contract being a camouflage and hence it being not required

to prove otherwise, were to be accepted, there would be no difference between a civil trial under the CPC and a proceeding before the Labour Court/Industrial Tribunal.

12. Though the respondent employer has not made out a case of the petitioner workman being on probation but in view of Clause 3 (supra) of the appointment letter that if the performance of the petitioner workman is found satisfactory he will be kept on permanent basis on the same post has led me to consider said aspect also. However on further appreciation I am unable to read the letter of appointment as providing for the petitioner workman being on probation. The petitioner workman is described therein as an unskilled worker. If he was to be on probation for a period of two years it would have been so provided and there would have been no provision for extension for a period of three months from time to time. Moreover there is nothing to indicate as to why the work was found satisfactory successively for three months for over one and a half years and then suddenly the respondent discharged. As aforesaid there is no evidence of the petitioner workman having been employed for any temporary absence or for doing some temporary or exigency work. Rather it is the argument of the counsel for the respondent employer that though the establishment of the respondent employer has now closed down but at the contemporaneous time was employing 140 persons in its showroom.

13. The petition is therefore entitled to succeed. The award of the Labour Court is found to be perverse. No case of Section 2(oo)(bb) was made out before the Labour Court. Termination under the said provision cannot be accepted on a mere production of a paper/document. The award is set aside and the termination of services of the petitioner workman by the respondent employer found to be illegal. The next question which arises is as to the relief to be granted to the petitioner workman. However I find that the petitioner had on 22<sup>nd</sup> May, 2005 offered to receive a sum of Rs.75,000/- in full and final settlement of all his claims. The said proposal was not accepted by the respondent employer. In view of the same, the relief to be granted to the petitioner workman cannot be in excess of the said amount. However considering that the petitioner workman was last drawing a salary of Rs.750/- p.m. and has worked for a period of less than two years for the respondent employer, I deem compensation in the sum of Rs.50,000/- to be adequate. The respondent employer is therefore directed to pay a sum of Rs.50,000/- by way of compensation for illegal termination of services to the petitioner workman. The said amount be paid within a period of one month from today failing which it shall incur interest at the rate of 9% p.a. The petitioner is also awarded costs of Rs.20,000/- of these proceedings payable alongwith compensation failing which it shall also incur interest as aforesaid.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**12<sup>th</sup> March, 2010/pp**