

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

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**WP(C) No.6686/2003**

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**Date of decision: 16<sup>th</sup> April, 2010**

**MANAGEMENT OF ASHOK HOTEL**

..... Petitioner

Through: Mr. Amit Seth, Advocate with Mr. Amit Wadhwa, Asst. Manager (HR) of petitioner.

Versus

**DELHI ADMINISTRATION & ORS.**

..... Respondents

Through: Mr. Gulshan Chawla and Mr. Maya Ram, Advocates for R-4 (1 to 6) and for Sh. Umed Singh.

***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 by this petition impugns the award dated 22<sup>nd</sup> October, 2001 of the Labour Court holding the termination by the petitioner of the services of the six workmen impleaded as respondent no.4 [1 to 6] and namely i) Om Prakash, ii) Bhim Singh, iii) Parvesh Hassan, iv) Shreepal, v) Kamal and vi) Parmanand to be bad, illegal and unjustified and directing the petitioner to reinstate the said workmen with continuity of service alongwith full back wages from the date of cessation of their services i.e. w.e.f. 1<sup>st</sup> September, 1990. The workman Shri Parmanand has however been held entitled to reinstatement alongwith only 75% of back wages w.e.f. 1<sup>st</sup> September, 1990. Notice of the

petition was issued to the respondent workmen and vide ex parte ad interim order of that date, the proceedings initiated by the respondent workmen for enforcement of the award were stayed. Litigation expenses of Rs.5000/- for each of the workmen amounting to Rs.30,000/- were directed to be deposited by the petitioner. The respondent workmen on being served have contested the writ petition by filing a counter affidavit and have also filed separate applications under Section 17B of the ID Act and which are pending consideration. The said applications were listed on 5<sup>th</sup> April, 2010 when the counsel for the petitioner was directed to furnish a tabulation showing the amounts which would be payable under Section 17B of the Act at the rate of the last drawn wages and at the rate of minimum wages w.e.f. the date of the making of the award and also with effect from the date of the filing of the said applications. The counsels were also directed to take instructions as to the possibility of amicable settlement of the matter.

2. The counsel for the petitioner has today stated that he has no instructions from the petitioner for amicable settlement. He however states that Mr. Amit Wadhwa, Assistant Manager, H.R. of the petitioner is present in the court. The counsel for the respondent workmen has however expressed willingness for amicable settlement. In the circumstances, with the consent of the counsel for the respondent workmen, the counsels for the parties have been heard on the aspect of Section 17B of the ID Act as well as on merits. The counsel for the petitioner has handed over the tabulation directed to be produced on the last date. As per the said tabulation, at the rate of the minimum wages and from the date of the award, a sum of approximately Rs. 3,40,000/- would be due to each of the

workmen under Section 17B of the Act. The counsel for the petitioner however contends that the respondent workmen are not entitled to order under Section 17B of the ID Act from the date of the award but at best from the date of the filing of the application under Section 17B of the ID Act only and on which basis a sum of approximately Rs. 1,50,000/- would be due to each of the respondent workmen. The counsel for the respondent workmen however controverts that the direction under Section 17B can be w.e.f. the date of the filing of the application. He contends that the said order necessarily has to be from the date of the award. The applications under Section 17B were filed in the end of the year 2006-2007. There is controversy between the parties as to the reason for filing of the applications long after the date of the award. The counsel for the respondent workmen contends that the present writ petition itself was filed long after the award and the respondent workmen were served with notice thereof even later and filed the applications under Section 17B immediately on being served with the notice of the writ petition. He contends that the respondent workmen had in the meanwhile initiated proceedings before the Labour Court for enforcement of the award.

3. The counsel for the petitioner has also argued that the award, insofar as in favour of the workman Shreepal, is obviously erroneous. It is urged that all the respondent workmen in the present case had been employed by the petitioner as casual/temporary workers on daily wages; that the Labour Court has in the award done the computation of the number of days for which each of the workman had worked; that qua the respondent workman Shreepal the finding returned is that he had worked for 161 days only i.e. he had not even worked for the minimum of

240 days on which basis relief had been granted. It is contended that in para 11 of the award also, while giving the names of the workmen who had completed more than 240 days of service, the name of Shreepal does not find mention; however in the relief paragraph of the award, the name of the respondent Shreepal has erroneously been mentioned. It is contended that the award, insofar as it is in favour of the respondent Shreepal, is liable to be set aside on this ground alone.

4. The counsel for the petitioner has further urged that the Labour Court has in computing the period of 240 days qua the other respondent workmen not restricted the inquiry to the preceding one calendar year only from the date of disengagement and had erroneously taken into consideration the entire period for which the other respondent workmen had worked. Without prejudice to the said plea, it has also been contended that the rule of reinstatement is not an invariable rule and especially in case of casual / daily wagers the rule invariably followed by court is of compensation in lieu of reinstatement. Reliance in this regard is placed on *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* AIR 2009 SC 3004.

5. At this stage the counsel for the respondent workmen has pointed out that another workman (and who is not a respondent herein) namely Shri Umed Singh was also a claimant in the same proceedings before the Labour Court; that though the finding of the Labour Court is that the said Umed Singh had completed more than 240 days of service and his name also finds mention in para 11 (supra) of the award but his name has erroneously been left out from the relief

paragraph of the award. It is stated that the said Umed Singh had filed an application before the Labour Court for correction of the award and which application has been recently allowed. The counsel for the respondent workmen state that they are counsel for the said Sh. Umed Singh also. They agree that there is an error in the award; that instead of Umed Singh the name of Shreepal has been wrongly mentioned. Mr. Gulshan Chawla and Mr. Maya Ram, Advocates state that they are in a position to make a statement on behalf of the respondent Shreepal and the said Shri Umed Singh also. They further state that the respondent workmen and Sh. Umed Singh are not insisting upon reinstatement and are agreeable to a lump sum compensation in lieu of reinstatement, back wages and all their claims whatsoever against the petitioner. The counsel for the respondent workmen and for Shri Umed Singh further state that if reasonable compensation is so awarded by this court, they are willing to withdraw the applications already preferred under Section 17B of the ID Act.

6. The counsels have been heard on the aspect of quantum of compensation. No merit is found in the plea of the petitioner that the respondent workmen and Shri Umed Singh are not entitled to even compensation from the petitioner. The scope of interference by this court in the award of the Labour Court is minimal. The finding of fact of the Labour Court of the respondent workmen excluding Shreepal and including Sh. Umed Singh is a finding of fact and cannot be interfered with by this court. Considering that the amounts payable under Section 17B itself, would be, minimum in excess of Rs. 1,50,000/- and maximum in excess of Rs. 3,50,000/-, this court is of the opinion that lump sum compensation in full and final settlement, of Rs.2,50,000/- to each of the respondents (except

Shreepal) and to Shri Umed Singh would be proper. The counsel for the respondent workmen and the counsel for Shri Umed Singh consent/agree to the same and further request that the same be made payable within six weeks of today. They further state that upon receipt of the said sum of Rs.2,50,000/- the said respondents and Shri Umed Singh shall be left with no claims whatsoever against the petitioner. They further have no objection to the award in so far as in favour of respondent Shreepal being set aside / quashed. They also request that instead of Sh. Umed Singh being required to enforce the corrected award as aforesaid or the petitioner being required to challenge the said corrected award in favour of Shri Umed Singh, the same order in this proceeding only be made with respect to Shri Umed Singh. The counsel for the petitioner also has no objection to the order in this writ petition with respect to Shri Umed Singh also.

7. Accordingly, this writ petition is disposed of with the following directions:

- a. All the pending applications u/S 17B of the I.D. Act of each of the respondent workmen being CM.No.605/2007, 644 – 648/2007 are withdrawn by the counsel for the respondent workmen and are dismissed as withdrawn.
- b. with the consent of the counsel for the respondent workmen including Shreepal, the award insofar in favour of Sheepal is set aside/quashed.
- c. with the consent of the counsel for the petitioner and the counsel for the respondent workmen and who is also the counsel for Shri Umed Singh, Shri Umed Singh aforesaid is impleaded as a party to the present

proceedings and the reference hereafter to the respondents shall be exclusive of the said Shreepal and inclusive of Shri Umed Singh.

- d. the award in favour of the respondents of reinstatement with back wages is modified to that of payment by the petitioner to each of the said respondents i.e. respondent i) Om Prakash, ii) Bhim Singh, iii) Parvesh Hassan, iv) Kamal, v) Parmanand and vi) Umed Singh a sum of Rs.2,50,000 within six weeks of today. If the payment is not made within six months the same shall also incur simple interest at the rate of 7% per annum. It is clarified that the said compensation is in full and final settlement and in lieu of the claim of the said respondents for back wages, reinstatement and otherwise and on receipt of the said amounts, the said respondents shall be left with no claims whatsoever against the petitioner. The counsel for the respondents assures that the said respondents have not initiated any other proceedings/complaint against the petitioner or its directors or officers and undertakes that Umed Singh aforesaid will also be bound by this order and shall hereafter not enforce the award in his favour and / or file any other proceedings against the petitioner save for realization of the amounts as per this order.
- e. the sum of Rs.30,000/- deposited by the petitioner in this court, if not disbursed till date, be returned to the petitioner. The parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**16<sup>th</sup> April, 2010**

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