

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 13431/2006**

JAWAHARLAL NEHRU UNIVERSITY Petitioner

Through: Mr. S.C. Dhanda, Adv.

Versus

SH. D.K. PANDEY Respondent

Through: Mr. J. K. Nayyar, Adv.

Judgment pronounced on : 28.09.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for a writ/ order/ direction for quashing the reference made by Delhi Administration dated 11.12.1992 and the consequent order dated 07.12.2005 passed by the Labour Court XII, Karkardooma, Delhi in I.D. No. 10/93 by which the Presiding Officer directed reinstatement of the respondent without any back wages.

2. The brief facts leading up to the filing of the present petition are that the respondent No.1 applied at the Petitioner University for the post of Assistant Clerk of Works (elect) and was employed w.e.f. 22.09.1973 with a consolidated salary of Rs. 450/- per month.

3. The work entrusted to the respondent No.1 was

supervision of construction of various buildings carried out by contractors in the University. As per petitioner, the job was temporary and liable to be terminated by either side with one months notice or on payment of one month's salary as the case may be. The respondent No.1 entered into a service contract on 07.07.1975 which marked the end of the original temporary appointment between the parties and the relationship between the petitioner and respondent No.1 was thereafter governed by the said service contract. The service contract was renewed time and again for about 15 years without any objection from either party.

4. In 1988-89 the petitioner decided to hand over the construction work to CPWD and therefore, had no need for supervisory staff looking over the construction process. The last renewal of the service contract vis-à-vis the respondent was vide an office memo dated 02.01.1989 and was for a period of three months only, expiring on 31.03.1989.

5. After being relieved from the post on 31.03.1989 the respondent No.1 applied for his terminal benefits and the same were duly paid by the petitioner.

6. Thereafter in 1991 the petitioner advertised for the post of a Junior Engineer (Elect) and informed respondent No.1 that he may formally apply for the same. Of the 25 persons who were shortlisted and appeared for the interview (including the respondent), none was selected.

7. The post was re-advertised in 1993, but this time respondent No.1 did not apply and therefore could not be selected and a candidate as per the recommendations was selected.

8. Thereafter on receiving an application from respondent

No.1 a reference was made by the Delhi Administration to the Labour Court who passed the award thereby directing the reinstatement of respondent No.1 on the same post by its order dated 07.12.2005 with seniority and other consequential benefits.

9. The petitioner has challenged the order/award dated 7th December, 2005 by filing the present writ petition on various grounds.

10. Concisely, the grounds set out by the petitioner for quashing the Labour Court's order dated 07.12.2005 can be read as under :

(i) The Labour Court did not appreciate that the respondent was employed with the petitioner University under a service contract which was duly signed and admitted by him. No reliance ought to have been placed on the original appointment of 1973 as the same had been superseded by the specific service contract in 1975 and the same was acted upon by both parties for about 15 years;

(ii) There is no allegation by respondent No.1 that he signed the service contract under duress or fraud and therefore the said contract should have been given effect to;

(iii) The Labour Court did not rely upon the documents proving that the respondent No.1 was engaged on a contract basis i.e. the service contract and various office orders extending the same;

(iv) The admissions made by respondent No.1 in paragraphs 6 and 7 of the Statement of Claim have been ignored and the finding that there was nothing to prove that the respondent's appointment was for a fixed period of time is erroneous;

(v) The finding vis-à-vis compliance of Section 25F of the Industrial Disputes Act, 1947 is erroneous as the respondent's employment ended due to efflux of time and there was no requirement of the petitioner complying with the said provision;

(vi) The respondent No.1, even as per the original employment in 1973 was employed on a temporary basis and had no right to reinstatement even as per that; and,

(vii) The respondent No.1 brought the claim before the Labour Court belatedly, much after accepting the release and terminal benefits from the petitioner.

11. As per respondent No.1 there was no stipulation in the original appointment that the services of the respondent No.1 would come to an end with the completion of the construction work. Further, the service contract entered into by him was not a contract per se but an appointment letter in the garb of a memorandum of agreement and the same did not cancel or revoke the effect of the former appointment letter.

12. As regards the petitioner's reliance on the factum of renewal of the service contract time and again, the respondent No.1 has argued that the said renewals of the agreement were unilateral acts without any express consent on the part of respondent No.1 and therefore cannot be relied upon. Further, as per the respondent No.1 he did not accept the release from his job but was thrown out of the same without any reason.

13. The respondent No.1 was appointed second time by letter dated 07.07.1975. The respondent No.1 has also brought attention to Clause 3 of the Memorandum of Agreement dated

07.07.1975 relied upon by the petitioner and has submitted that contrary to its stipulations, no notice or any pay in furtherance thereof was given to the respondent. Further, the petitioner lost its right to unilaterally renew the service contract in 1978 and as such, on the date of termination of the respondent's services, there was no contract in effect which entitles the respondent to protection under Section 25F of the Industrial Disputes Act.

14. The respondent has claimed that the petitioner University was whimsical and arbitrary in its rules and attitude vis-à-vis its employees and the same is confirmed by the fact that the respondent was granted an increment of Rs. 50/- on 27.03.1989 though his services were to terminate on 31.03.1989.

15. This court has perused the record and the submissions of both parties. The main issue involved in the matter is whether the respondent was engaged for a fixed period of time or whether the management has violated Section 25 F of the Industrial Disputes Act, 1947.

16. The following issues were framed before the labour court:

1. Whether the claimant was employed on contract basis, as alleged, if so, its effect?
2. As per terms of reference.

17. The respondent in his deposition produced the appointment letter dated 11.09.1973 issued by the petitioner exhibited as WW1/1 as well as representations dated 03.04.1989 and 19.06.1989 made to the petitioner exhibited as WW1/2 and 3 respectively. The respondent also produced representations dated 26.07.1989 and 31.03.1990 addressed to the Ministry of Human

Resource Development, Government of India, as well as to the Hon'ble Prime Minister, Govt. of India which are marked as exhibit WW1/4 and 5 respectively. The copy of letter dated 08.10.1991 of the petitioner asking the workman to apply for the post of Junior Engineer (Electrical) is exhibited as WW1/6. Copy of termination letter dated 31.03.1989 issued by the petitioner to the workman is exhibited as WW1/12.

18. From the petitioner side Mr. M.K. Prabhakar, Assistant Registrar tendered his affidavit in evidence which is also on the similar lines as per the statement made in the written statement. The witness produced the office order dated 08.07.1975 along with the terms and conditions of the appointment as per the contract of the petitioner thereby appointing the respondent as Assistant Clerk of works in the University w.e.f. 13.12.1974 on a fixed salary of Rs. 440/- plus prescribed allowances which is marked as Ex.M1 and copy of relieving order dated 31.03.1989 which is marked as Ex.M2.

19. The other documents i.e. balance dues, leave encashment, gratuity are marked as Ex. M3 to M5. The petitioner has also produced the documents by way of letters written by the petitioner to the respondent advising him to apply for the post of Junior Engineer, copy of minutes of meeting and reply and the same are exhibit as M6 to M13.

20. The first appointment letter dated 11.09.1973 reads as under:

“Sh. Dileep Kumar Pandey has been selected for appointment as a temporary Assistant Clerk of Works (Electrical) in this university on the consolidated salary of Rs. 450/- per month. The appointment is

temporary and liable to termination at any time without assigning any reason by one month's notice on either side or on payment of one month's consolidated salary in lieu thereof or as the case may be for the period by which such notice falls short of one month.

He will be required to produce a medical certificate of fitness from the competent medical authority prescribed by the university. He will have to produce to character certificate of recent date from two gazette officers etc."

21. The petitioner's main contentions revolve around the service contract dated 07.07.1975 being entered into voluntarily, signed and admitted by the respondent. It is argued by the petitioner that the appointment letter dated 11.09.1973 ought not to have been relied upon by the respondent since it was superseded by the service contract entered into between the parties.

22. The relevant extracts of the service contract dated 07.07.1975 can be read as under :

"(1) THE UNIVERSITY hereby appoints Shri D.K. Pandey as a clerk of works with effect from the 13th December, 1973 in connection with the execution of work(s) in Jawaharlal Nehru University Campus.....

(3) HIS SERVICES are liable to be terminated at any time without assigning any reason with one month's notice on either side or on payment of one month's fixed salary and allowance in lieu thereof or, as the case may be for the period by which such notice falls short of one month."

23. From a mere reading of Clause 3, it appears mere reading of clause 3 it appears that there was no requirement of giving notice or one month's pay as per Clause 3 of the service contract between the petitioner and respondent which expired on

31.03.1989 as the same were to be given if the service had to be terminated before the expiry of the term of service contract . In the case of **New Delhi Municipal Council vs. Shri Dori Lal** MANU/DE/0041/2010 it was held :

“9. It is apparent on a plain reading of the provisions contained in Section 2(oo)(bb) of the Act extracted above that no notice was required to be given by the petitioner to the respondent workman for termination of his services on the closure of its Centre as the term for which he was appointed had come to an end on that day. The terms of appointment contained in the appointment letter Ex. MW-1/7 clearly put the respondent workman to a notice that his contract of employment with the petitioner would come to an end on 31.03.1994 and therefore, he was not entitled to any further notice from the petitioner in this regard. The non- renewal of tenure employment of the respondent workman by the petitioner corporation does not fall within the ambit of 'retrenchment' provided in Section 2(oo) of the Industrial Disputes Act, 1947.”

24. Similarly in the case of **Ram Kishan vs. Management of M/S American Express Banking Corporation & Anr.;** MANU/DE/3277/2009 the facts were that a cleaner was appointed on a contract basis for a fixed period of three years and after three years the contract was not renewed resulting in the termination of his services at the end of the contract period. This Court held as under :

“In our considered view, the provisions of Clause (bb) of Section 2(oo) of the ID Act stand attracted and the termination of the services of the Appellant, as a result of non-renewal of the contract of employment on its expiry, does not amount to retrenchment under section 2(oo) of the ID Act.”

25. In view of the documents placed on record by the

parties, it is clear that the respondent was appointed by the petitioner in 1975 and he was fully aware of the fact that his appointment is a contractual appointment and would end when his term gets over, therefore, he cannot claim any right to be re appointed by the petitioner after the expiry of his term. Hence, the finding of the Labour Court in this regard is not sustainable. This point was dealt with in the cases of **Secretary, State of Karnataka and Ors. vs. Uma Devi and Ors.** AIR 2006 SC 1806 wherein it was held as under :

“4. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.”

26. It is settled law that a probationer cannot be deemed to continue in the post, as an express order of confirmation is necessary to give the employee a substantive right to the post. The mere fact that he was allowed to continue in the post after expiry of specific period of probation, it is not possible to hold that he should be deemed to have been confirmed.

27. In the present case also the respondent had an option to apply when the post was re advertised in 1993 but, he did not apply for it therefore, he cannot question the appointment of another candidate.

28. Thus, there is no merit in the submission of the respondent that the petitioner had been appointing the respondent on term to term basis which are not yearly or half-yearly and there was no stipulation in the contract that the services of the respondent would come to an end after its expiry and as per contract, one month notice was required to be served after the termination of his service. Further the Labour Court did not appreciate the fact that the service contract was signed and admitted by the respondent. As regard the earlier appointment of 1973 was concerned, the same was superseded by the service contract. There was no allegation on behalf of the respondent that the service contract was signed by him under duress or fraud, thus the finding of the trial court in favour of the respondent No.1 was not correct and rather those were it was contrary to various documents placed by the petitioner.

29. It is not disputed by the respondent in his application that after termination of the service of the petitioner, he was working as a Junior Engineer in Congress Central Office, Jawahar Bhawan, New Delhi. Even in the evidence produced by him before the labour court he had not stated anywhere that he was unemployed or he had not been able to get alternate job.

30. The respondent has reached the age of superannuation as per the statement made in court and recorded in the order dated 6th October, 2009.

31. In view of the above mentioned discussion, I am of the view that the findings arrived by the Labour Court in the award are not sustainable in the facts of this case and are contrary to law. The present writ petition deserves to be allowed. The Award dated 7.12.2005 is set aside, however, there shall be no orders as to costs.

MANMOHAN SINGH, J.

SEPTEMBER 28, 2010
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