

\* HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: October 8<sup>th</sup>, 2010

+ W.P.(C) 6386/2007

SHRI ANAND SINGH BISHT ..... Petitioner  
Through : Ms. Yasmin Zafar, Advocate

versus

ANAND KUMAR GAUTAM & ANR. .... Respondents  
Through : Mr. Sidharth Panda for  
Mr. R.S. Jena, Advocate for R-1

**CORAM:-**  
**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

**Veena Birbal, J**

1. By way of present petition under Article 226 of the Constitution of India, petitioner has challenged impugned award dated 13.12.2006 by which Labour Court-XVI, Delhi has held that the services of petitioner have not been terminated illegally or unjustifiably by the respondent/management and as such has not been granted any relief.
2. The case of the petitioner is that he was appointed by the respondent/management on 01.10.1995 as a driver but no letter of appointment was given to him. Initially, he was shown as a casual worker but later on he was confirmed on 01.09.1999 and thereafter was treated as a regular employee w.e.f. 01.02.2000. He continuously worked with the management till 28.02.2002, when his services were illegally terminated. His last drawn wages were Rs. 6616/- p.m. and a cheque of Rs. 11,645/-

was given to him towards one month salary and compensation of services rendered by him w.e.f. 01.02.2000. It is alleged that respondent/ management did not take into consideration the period of service w.e.f. 01.10.1995 when he was employed. Petitioner accepted the same under protest. Petitioner served a demand notice dated 02.04.2002 through the counsel but of no result. Petitioner filed conciliation proceedings wherein statement of claim was filed by him but conciliation proceedings resulted in failure and the dispute was referred by the Secretary (Labour), Government of NCT of Delhi to the Labour Court for adjudication wherein petitioner filed the statement of claim alleging therein the same facts as are stated above.

3. The statement of claim filed by him before the Labour Court was opposed by the respondent/management by filing a written statement wherein it was alleged that the termination was legal and justified and that he was not entitled for any relief. The stand of management before the labour court was that in view of huge maintenance charges of Delhi office and as a measure of economy, management decided to dispose of the vehicle along with abolition of post of driver from Delhi office and as such, in terms of the appointment of petitioner, one month wages in lieu of notice along with compensation was given to him which was duly acknowledged by him, as such, petitioner was not entitled for any relief. Thereafter, issues were framed. Both the parties led evidence and ultimately Labour Court vide impugned award held that the services of petitioner had not been terminated illegally or

unjustifiably by the management and no relief had been given to him. Aggrieved with the same, the present petition is filed.

4. Learned counsel for petitioner has contended that the petitioner had joined the services w.e.f. 1.10.1995 and was confirmed on 01.09.1999. It is contended that petitioner has been retrenched without any rhyme and reason and without payment of full compensation as provided under Section 25(F) of ID Act which is a condition precedent for retrenchment of a workman. In support of her contention, learned counsel has relied upon *Haryana State Electricity Board v. Randhir Singh, Asst. Line-Man & Anr.; C.W.P. No. 2566/1982* dated 29.04.1993.

5. On the other hand, the stand of the respondent/management is that the petitioner was working as a driver w.e.f. 01.01.1999. It is contended that in view of huge maintenance charges of Delhi liaison office, as a measure of economy, the management decided to dispose of the vehicle with the abolition of post of driver from Delhi liaison office and one month's notice alongwith compensation i.e. total amount of Rs. 11,645/- was given to him along with the letter of termination dated 28.02.2002. It is contended that it is also proved before the Labour Court by leading evidence that the post of driver of Delhi office was abolished due to austerity measure and provision of Section 25F of ID Act was followed. In support of his contention, learned counsel has relied upon *D.G.M., Oil and Natural Gas Corpn. Ltd. and Anr. v. Ilias Abdulrehman* reported in AIR 2005 Supreme Court 660; and *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr.* reported in AIR 2005 Supreme Court 4065.

6. I have considered the submissions made and perused the material on record.

The stand of petitioner/workman is that he had worked with respondent/management from 1<sup>st</sup> October, 1995 and was confirmed w.e.f. 1<sup>st</sup> September, 1999, as such service for that period ought to have been counted while complying with Section 25 F of the Act. In order to prove the alleged period of service, petitioner had filed his own affidavit wherein he had stated that he was appointed by the respondent/management on 1<sup>st</sup> October, 1995 as casual/probationer and was confirmed on 1<sup>st</sup> September, 1999. Thereafter he was treated as a regular employee. In order to prove his working from 1995, petitioner had filed certain petrol filling slips which are Ex MW 1/DA & Ex.MW 1/DA-1 to EX.MW 1/DA-7. Petitioner had not filed any other documentary evidence to prove his working from 1995. Burden was on the petitioner to prove the same. Petitioner had also not got summoned any record from the management at the time of evidence before the Labour Court about his alleged continuous employment from 1995 like attendance register, log books etc.

The stand of respondent/management is that petitioner never worked continuously from 1995. He was appointed as a daily wager on the basis of necessity of his services and used to drive the vehicle as and when he was required. Management witnesses (MW1 and MW2) categorically stated so in their evidence. The labour court after considering the entire material on record has given a finding that petitioner/workman had joined the series of

management as a regular employee from 1<sup>st</sup> September. 1999.

The relevant finding in this regard is as under:-

“In order to prove the fact that workman was appointed w.e.f 1.10.95 with the management, he has filed his affidavit. In his affidavit he has categorically stated in para 1 that he was appointed on 1.10.95 as a casual as well as probationer but later on confirmed and treated as a regular employee w.e.f 1.01.2000. This, itself, shows that he was initially appointed as a casual employee which has also been admitted by MW-1 Sidhartha Patnaik during the cross examination stating that Sh.Anand Singh Bisht was appointed in the year 1995 but on daily wages. Workman has proved documents Ex.MW 1/DA & MW 1/DA-1 to Ex.MW 1/DA-5 which are petrol filling slips from 1.6.97 onwards. He could not produce petrol filling slips for the year 1995 & 1996. He also could not produce petrol filling slips from January 1997 to May, 1997. It is also found that petrol filling slips for the month of November, December, 1997 & 1998 have also not been produced on record. There is also no petrol filling slips for the month of January, February & April, 1998. It supports the evidence of MW 1 Sidhartha Patnaik that workman used to come for the job as and when necessary and shows that he was not working continuously with the management. No other witness has been examined to prove the fact that workman Anand Singh Bisht was working with the management continuously from the year 1995 till he was appointed on regular basis. No document i.e attendance register, log book etc. were summoned from the management by AR for workman to establish that workman was continuously working with the management since 1995. Therefore, it is held that he was appointed as a daily wager on the basis of necessity of his services and used to drive the vehicle of management as and when he was required till he was appointed as a regular employee.

8. Burden was on the petitioner to prove that he had worked continuously with management from 1995. As noted above, petitioner has failed to prove the same. No illegality is seen in the finding of the Labour Court in this regard. Learned counsel for the petitioner has relied upon Haryana State Electricity Board v. Randhir Singh, Asst. Line-Man & Anr. (supra). The judgment cited has no relevancy to the facts of present case. It deals with

altogether different facts and circumstances. In the present case, petitioner has failed to prove his continuous employment as a casual employee from 1995 as such that period could not have counted while calculating compensation under Section 25 F of the Act. Perusal of material on record shows that at the time of terminating his service w.e.f 28<sup>th</sup> February, 2002, full compensation has been given to him and section 25 F of the I.D Act has been duly complied with. It has also come on record that petitioner was the junior most driver with management. Petitioner/workman has failed to show that management has violated the provisions of section 25 G of the I.D Act as the management has proved the same as per document Ex MW 1/2.

It has also come in evidence that the post of Driver has been abolished in the Delhi office of management. Petitioner in his evidence had also stated that he was the only driver with management. No evidence has been produced by the petitioner that after his termination, some other driver has been appointed.

Considering the totality of the facts and circumstances, no illegality or perversity is found in the impugned award passed by the Labour Court which requires interference by this court under Article 226 of the Constitution of India.

In view of the above, present petition stands dismissed. There is no order as to costs.

Labour court record be sent back along with copy of this judgment.

**VEENA BIRBAL, J**

**October 8, 2010**  
kks/ssb