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

+ LPA 499/2008

MUNICIPAL CORPORATION OF DELHI Appellant
 Through: Mr. Mukesh Gupta, Advocate.
 versus

SHRI NARENDER KUMAR AND ANR. Respondents
 Through: Ms. Neelam Tiwari, Advocate for
 Mr. Anuj Aggarwal, Advocate.

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Date of Decision: 25th October, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the 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.

J U D G M E N T

MANMOHAN, J :

1. Present Letters Patent Appeal has been filed challenging the judgment and order dated 24th September, 2007 whereby the learned Single Judge has dismissed the appellant's writ petition being W.P.(C) 15232/2004. It is pertinent to mention that the aforesaid writ petition had been filed challenging the award dated 18th September, 2003 passed by the Labour Court No.IX in I.D. No.232/95.
2. During the course of hearing of the appeal, we had put a

suggestion to both the parties to amicably resolve the matter if possible.

The order dated 20th August, 2010 is reproduced hereinbelow:-

“Without prejudice to the contentions raised in the appeal, a suggestion was given to the learned counsel for the parties to settle the controversy.

Regard being had to the period of service rendered and taking note of the fact that the workman was paid upto 2004, it is thought appropriate that payment of Rs.75,000/- as compensation to both the workman who are respondents herein would subserve the cause of justice.

Mr. Mukesh Gupta, learned counsel for the appellant and Mr. Anuj Aggarwal, learned counsel for the respondents shall obtain necessary instruction from their respective clients.

List the matter on 09th September, 2010.”

3. When this matter was taken up for hearing on 25th October, 2010, Mr. Mukesh Gupta, learned counsel for the appellant-MCD stated that MCD was willing to pay ₹ 75,000/- each to both the respondents-workmen in full and final settlement of all their claims and dues. However, Ms. Neelam Tiwari, learned counsel for the respondents-workmen stated that respondents-workmen are not willing to accept ₹75,000/- each in full and final settlement of their claims. Consequently, with the consent of the parties, matter has been heard.

4. Mr. Mukesh Gupta, learned counsel for the appellant submitted that the respondents-workmen had been employed on daily wages for a specific period of 53 days only and consequently the termination of their services could not be considered as retrenchment within the meaning of Sections 2 (OO) and 25-F of the Industrial Disputes Act,

1947 (for the brevity “Act”). Mr. Gupta reiterated that the learned Single Judge had failed to appreciate that the employment of the respondents-workmen was purely temporary and contractual in nature against seasonal work for a specified period of 53 days and, therefore, it could not be assumed that the respondents-workmen services were terminated by the appellant-management. Accordingly, he submitted that the provisions of Sections 25-G and 25-H of the Act are not applicable to the respondents-workmen.

5. Ms. Neelam Tiwari, learned counsel for the respondents-workmen submitted that the finding impugned by the appellant was a pure finding of fact and could not be interfered with in a Letters Patent Appeal.

6. Having heard the parties and perused the record, we find that the Labour Court has erroneously reached the conclusion that the appellant-management had failed to prove that it had engaged the respondents-workmen for a specific duration, even though it recorded in its award dated 18th September, 2003 that, *“the appointment letter dated 12th October, 1989 though shows that the claimants were appointed for a period of three months.”* In fact, from the award it seems that the Labour Court has disregarded the specific appointment letter only on the ground that the witness of the appellant had stated in his cross-examination that, “he was not aware as to what was the exact nature of duration of employment”. In our opinion, in view of the written appointment letter no oral evidence to the contrary could have been

entertained. In fact, the conclusion arrived at by the Labour Court is not only contrary to law but also a perverse one.

7. Consequently, as the appointment of respondents-workmen as casual workers was for a fixed period and their termination was in accordance with the contract of employment, Section 25-H of the Act would not have any application.

8. In fact, the Supreme Court in ***Regional Manager, SBI Vs. Mahatma Mishra, (2006) 13 SCC 727*** has held as under:-

“6. The approach of the Labour Court as also the High Court cannot be appreciated. The respondent was appointed only for 88 days. The requirements of Section 6-N of the U.P. Industrial Disputes Act were, thus, not required to be complied with. The Labour Court although proceeded on the basis that Section 25-H of the Industrial Disputes Act would be attracted, no reason has been assigned in support thereof. If the appointment of the respondent as a casual worker was for a fixed period and the termination of his services was in terms of contract of employment, Section 25-H of the Industrial Disputes Act would not have any application. In a case of this nature, Section 25-H of the Industrial Disputes Act is not attracted. It is not in dispute that the appointment of the respondent was made in violation of circular letter issued by the appellant Bank. Requirements of law as envisaged under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 had also not been complied with.

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8. The Labour Court committed a serious illegality in proceeding on the basis that retrenchment was illegal. It was not so. As was rightly observed by the High Court, the respondent was not entitled to a permanent status. If he was not entitled to conferment of any permanent status having worked only for 88 days and that too in the year 1982, we fail to understand as to how he was entitled to be reinstated in service and that too with full back wages. The High Court although noticed the recent decisions of

this Court in relation to grant of back wages but it failed to consider a vital aspect of the matter viz. reinstatement in service can be directed provided the termination is illegal. No finding of fact has been arrived at that the termination of the service of the respondent was illegal. The question of directing an award reinstating him in service did not and could not arise.”

(emphasis supplied)

9. In view of the aforesaid dictum of law, the present appeal is allowed and the order of Labour Court as well as the learned Single Judge's order is set aside. But keeping in view the long drawn out litigation and the ill informed witness that was produced by the MCD, we are of the opinion that the ends of justice would be met if ₹ 75,000/- each is awarded as compensation to both the respondents-workmen. The said amount shall be paid to the respondents-workmen within three months from today by way of an account payee cheque and that too against a receipt.

10. Order dasti.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 25, 2010

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