

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

Date of decision: 10th May, 2011.

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W.P.(C) 1911/2011

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RAM NARESH SINGH

..... Petitioner

Through: Mr. Atul T.N., Adv.

Versus

DELHI JAL BOARD

..... Respondent

Through: Mr. Arvind Kumar Verma & Mr.
Amitabh Verma, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 writ petition impugns the award dated 2nd December, 2010 of the Industrial Adjudicator on the following reference:

“Whether the services of Sh. Ram Naresh Singh S/o Sh. Udham Singh have been terminated illegally and/or unjustifiably by the management; and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing

laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

2. The Industrial Adjudicator found that the petitioner workman was simply disengaged on completion of work and that disengagement from service does not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and that the petitioner workman was not appointed on regular basis and had not performed continuous work for a period of more than 240 days in any calendar year preceding the date of his alleged termination and hence there was no question of his being terminated. Accordingly the petitioner workman was held not entitled to any relief.

3. It was the claim of the petitioner workman before the Industrial Adjudicator that he was engaged as Beldar by the MCD (not a party to this writ petition) on daily wages in the year 1998; that he worked with the MCD for a period of 240 days; that his services were abruptly terminated towards the end of the year 2000. The dispute was raised in or about the year 2004.

4. The respondent Delhi Jal Board (DJB) pleaded before the Industrial Adjudicator that the petitioner workman had never worked with the respondent DJB and there was no relationship of employer-employee; that the identity card relied upon by the petitioner was a fake and forged document; that DJB came into existence in April, 1998 and at that time the CSE department under which the petitioner workman was claiming to have worked, was under the MCD; that since the respondent DJB had never engaged the petitioner, the question of terminating his employment did not arise.

5. MCD was also impleaded as a party before the Industrial Adjudicator. MCD also contested the claim of petitioner workman by pleading that the petitioner workman had never worked for 240 days in a calendar year; that he was engaged as a daily wager Beldar on muster-roll and was being paid under the Minimum Wages Act; that he worked only for 66 days in the year 1998 and for 160 days in the year 1999; that upon the work of Sewer Department being transferred to DJB, all staff relating to the said department were also transferred to DJB in March, 2000.

6. The Industrial Adjudicator found that the petitioner workman in his affidavit had not contradicted the claim of the MCD of his having worked for 66 days in the year 1998 and 160 days in the year 1999; that the petitioner workman had failed to prove the original documents relied upon by him including the identity card aforesaid; that he though claimed to have been transferred from MCD to DJB but did not produce any transfer order; he did not even specify the dates when he performed duty with DJB and also did not produce any document in that regard; that the demand notice dated 17th January, 2001 claimed to have been got issued by the petitioner workman was not a demand notice but merely a letter to the member of administration of DJB and had only made a prayer for appointment on compassionate grounds; that no demand either to MCD or to DJB had been proved. The Industrial Adjudicator has also recorded that the petitioner workman in the cross-examination of the witnesses of the respondent DJB had produced the Attendance Register Ex. MW1/W2; that the witnesses of the respondent DJB had denied the said document to be of DJB; the Industrial Adjudicator also found that even though it was the case of the petitioner workman himself that he was terminated in the year 2000 but the

said document showed the presence of the petitioner workman in the year 2001, 2002 and 2003 also and which showed that the said document had been manufactured or fabricated. The Industrial Adjudicator thus held that the petitioner workman had never been the regular employee either of the MCD or of the respondent DJB and had worked only for 66 days in the year 1998 and 160 days in the year 1999 and was not entitled to any relief as aforesaid.

7. The petitioner workman in this writ petition has impugned the finding of the Industrial Adjudicator of the petitioner workman having not completed 240 days. However the said finding is a finding of fact ordinarily not interferable in writ jurisdiction. The petitioner workman has neither pleaded nor urged as to how the said finding of fact can be said to be perverse or unreasonable or not borne out from the evidence/material led before the Industrial Adjudicator. Rather, the Industrial Adjudicator has found the petitioner workman guilty of fabrication of and forging of document put to the witnesses of the DJB.

8. The petitioner workman has in the writ petition also referred to ***Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda*** AIR 2010 SC 1236 laying down that it is difficult for the workman hired on daily wage basis to have access to all official documents, muster rolls and/or to prove his/her continuous service of 240 days and once the workman had deposed so on oath, burden of proof shifts to employer to prove that the workman did not complete 240 days. I fail to see as to how the said principle can be said to be applicable to the facts of the present case. In the present case, the MCD and respondent DJB produced their records and on the basis whereof the Industrial Adjudicator concluded that the petitioner workman had not worked for 240 days. Similarly, the records produced and relied upon by the petitioner workman to prove his employment in excess of 240 days was found to be forged and fabricated as aforesaid.

9. The counsel for the petitioner workman during the hearing has also referred to ***UOI Vs. Ramchander*** (2007) 1 SCC (L&S) 439. However, in that case the finding was of appointment as casual labour against sanctioned

post and of intentional breaks to prevent the workman from completing more than 89 days of continuous employment and of sufficient work being available for the workman by the employer. In this context the Apex Court held a case of violation of Section 25G of the I.D. Act to have been made out and refused to interfere with the direction of the High Court. Again, in the present case, neither is it the case of the petitioner that there was a sanctioned post against which he was casually employed nor is it the case of the petitioner workman that artificial breaks were introduced to prevent him from completing 240 days or that MCD/DJB had indulged in any unfair labour practice.

10. No error is found in the award of the Industrial Adjudicator. There is no merit in the writ petition; the same is dismissed. No order as to costs.

CM No.4087/2011 (for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 10, 2011

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