

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.09.2011

W.P.(C) No. 6211/2007

RAKESH S/O SHRI PARMANAND

.....Petitioner

Through: Mr.H.K. Chaturvedi, Adv.

Vs.

THE MANAGEMENT OF FRUIT & VEGETABLE PROJECT Respondent

Through: Mr. Dinesh Agnani, Sr. Adv. with
Mr. M. Sivkumar, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned Award dated 10.7.2007 in I.D No. 702/2006 passed by the learned Presiding Officer, Labour Court No. XIX, Karkardooma Courts, Delhi, whereby

the learned Labour Court answered the reference against the petitioner workman and in favour of the respondent.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner workman was employed by the respondent management as a helper in the month of January, 1993 on a regular post. That thereafter the management terminated the services of the petitioner workman on 01.04.1999, without giving any notice, and consequently the said dispute was referred for adjudication and the learned Labour Court held that the termination of services of the petitioner is not illegal and cannot be considered to be a retrenchment and thus is not entitled to any relief. Feeling aggrieved with the same, he has filed the present writ petition.

3. Arguing for the petitioner, learned counsel for the petitioner submits that the learned Trial Court has ignored the evidence of the management adduced through Deepak Singh MW-1, who in his cross-examination, has admitted the fact that the management had engaged casual employees to perform the same work as that of the petitioner after his termination. The contention of the counsel for the petitioner is that based on the said admission of the management, the learned Trial Court should have taken a view that the respondent management has failed to comply with the

provisions of Section 25G and 25H of the ID Act. Counsel also submits that the petitioner has duly proved on record his continuous employment with the respondent management for a period of more than 240 days as he was in employment from January 1993 to April 1999. Counsel, however, very fairly admitted that the said continuous employment was proved by the petitioner through his own affidavit.

4. The petition is strongly opposed by Mr. Dinesh Agnani, learned Senior Counsel for the respondent.

5. I have heard learned counsel for the parties.

6. In the case at hand, the petitioner workman in his Statement of Claim has stated that he had been working on the regular post of Helper since January, 1993 and after having been in the continuous service of the respondent management, although being appointed from time to time for a period of three months, he was ultimately terminated on 1.4.1999, without notice and without adhering to the mandate of Section 25F of the ID Act. On the contrary, the stand of the respondent management before the Labour Court was that the petitioner was never in continuous employment with the respondent management and was engaged for varying periods of specified contract of employment from time to time, depending upon the quantum of work with the respondent

management. Based on the pleadings of the parties, the learned Labour Court framed the following issues:-

1. Whether the workman was a casual workman for varying periods of specified contract of employment? If so, its effect?
2. Relief, in terms of reference.

8. In support of his Statement of Claim, the petitioner had examined himself as WW1 and the respondent management had examined its manager and Senior Coordinator as MW1 and MW2. The learned Labour Court, after appreciating the evidence led by the parties, and the documents produced on record, found that the period of employment of the petitioner workmen varied from 9 days at one stretch to the maximum of 81 days and there had been large gaps between these periods of employment. The learned Labour Court, however, found that there were no artificial breaks given by the respondent and the contractual employment of the petitioner was dependent on the need of the management which was not constant and used to fluctuate from time to time. The learned Labour Court, therefore, rejected the conclusion that the petitioner workman was employed by the respondent management as a casual worker for varying period of specified contract of employment and his cessation of employment from 1.4.1999 would not amount to retrenchment and the same shall be covered under Section 2(oo) and 2(ii) of the ID Act.

This Court does not find any perversity in the said reasoning given by the Labour Court. It is a settled legal position that once an appointment is for a fixed period on a contractual post, then Section 25 F will not be attracted as such a case will be covered by Clause (bb) of Section 2(oo) of the ID Act unless the Court finds that such a contractual employment is with a view to misuse the provisions of Section 2(bb) and 2(oo) of the ID Act. So far as plea of the petitioner that his termination was in violation of Section 25G and 25H of the ID Act, here also the learned Labour Court has rightly held that the said provisions would not be attracted as the case of the petitioner was covered under Section 2(oo) and 2 (bb) of the ID Act and as such the cessation of the contractual employment of the petitioner workman would not be held as illegal because of the violation of Section 25G and 25H of the ID Act. Learned counsel for the petitioner in his argument has very fairly admitted the fact that the petitioner failed to prove his continuous service of more than 240 days and the burden to prove the same was on the petitioner workman and he failed to discharge the same.

9. The limits and extent of jurisdiction of the High Court under Article 226 of the Constitution of India are well settled and it is only where the order of the Labour Court or the Industrial Tribunal

suffers from an error of the jurisdiction or any breach of principles of natural justice or is vitiated by manifest perversity or error of law, the Writ Court may interfere. It is also a settled legal position that the Labour Court is the final court of determination of facts and the High Court, in the exercise of its writ jurisdiction, will not ordinarily reappraise the evidence or try to find the loopholes in the Award passed by the Labour Court unless the Award passed is perverse on the very face of it ignoring any material piece of evidence, appreciation of which could tilt the balance in favour of other party or the evidence so recorded before the learned Labour Court has been so misread causing serious prejudice to the unsuccessful party. There exists none of the above to persuade this court to interfere in the impugned.

10. In light of the above, this Court does not find any merit in the present petition and the same is hereby dismissed. Parties are left to bear their own costs.

KAILASH GAMBHIR, J

September 12, 2011