

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

Date of decision: 18th July, 2011.

+ **W.P.(C) 12393/2009 & CM No.12821/2009 (for stay)**

GOVT. OF NCT OF DELHI

..... Petitioner

Through: Mr. S.P. Sharma, Adv. for Dr.
Ashwani Bhardwaj, Adv.

Versus

SH. RAVI KUMAR & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 2nd July, 2009 of the Industrial

Adjudicator on the following reference:-

“Whether the services of Smt. Chando Devi have been terminated by the management illegally and/or unjustifiably and if so, what relief is he entitled and what directions are necessary in this respect?”

and holding the termination to be illegal and unjustified and directing the petitioner to treat the said Smt. Chando Devi to be on duty till her death on 3rd March, 2007 and to regularize her services w.e.f. the date her juniors were regularized and awarding compensation of ₹5 lacs to her legal heirs, the respondents herein and to also fix and pay pension to her eligible legal heirs.

2. The matter has a chequered history. Smt. Chando Devi joined the workshop of Irrigation and Flood Control Department of the petitioner on 16th May, 1975 as an unskilled worker on work charged basis. Her services were terminated vide Memorandum dated 16th September, 1976 enforced with effect from 14th October, 1976, on the ground that she had at the time of joining the services of the petitioner given a false affidavit as to the date of her birth; while she had given her date of birth in affidavit as 2nd April, 1950 disclosing herself to be 24 years of age but upon medical examination pursuant to a letter from Anti Corruption Department, she was found to be over 35 years of age.

3. Smt. Chando Devi raised a dispute on which reference aforesaid came

to be made. The Industrial Adjudicator vide award dated 16th September, 1991 held that since Smt. Chando Devi had obtained employment by unlawful means and fraudulent representation, she was not entitled to any relief.

4. Smt. Chando Devi preferred W.P.(C) No.2932/1992 impugning the award aforesaid. The said writ petition was allowed vide judgment dated 16th September, 2005. It was held that since Smt. Chando Devi had not been given any notice or hearing preceding her termination and the principles of natural justice had been violated, the award could not be sustained. The matter was remanded to the Industrial Adjudicator for fresh consideration.

5. The Industrial Adjudicator pursuant to the said remand held that since it was undisputed that Smt. Chando Devi had worked for more than 240 days, Section 25F of the Industrial Disputes Act was applicable and had admittedly not been complied with and thus the termination of her employment was bad. Relief aforesaid was granted.

6. Notice of the writ petition was issued and subject to the deposit of the award amount in this Court, the operation of the award stayed. Pleadings

have been completed and the counsels for the parties have been heard.

7. The counsel for the petitioner has invited attention to the copy of the Ration Card filed by the legal representatives of Smt. Chando Devi before the Industrial Adjudicator along with the application for substitution and in which, the year of birth of Smt. Chando Devi is recoded as 1943. He has contended that when the own documents of the respondent falsifies the claim of Smt. Chando Devi at the time of seeking employment of year of her birth being 1950, it has to be necessarily held that Smt. Chando Devi had obtained employment by misrepresentation. It is urged that she cannot be entitled to any relief. It is further contended that the relief granted of compensation of ₹5 lacs and pension is excessive considering that she had worked with the petitioner barely for one and a half years and that too as a work charged employee.

8. I may notice that the Industrial Adjudicator in the award impugned has not dealt with the aspect of the age of Smt. Chando Devi as per the Ration Card. The respondents in their counter affidavit have merely stated that the age given in the Ration Card is irrelevant. The counsel for the

respondents has invited attention to ***Management of Garrison Engineer Vs. Bachhu Singh*** MANU/DE/1495/2010 where for termination of a casual worker in contravention of Section 25F lump-sum compensation of ₹4 lacs and enhanced to ₹6 lacs in order dated 2nd December, 2010 in LPA No.340/2010 thereagainst was awarded. He has thus contended that the compensation awarded in the present case of ₹5 lacs cannot be said to be excessive.

9. The counsel for the respondents has in the counter affidavit also referred to certain judgments on the narrow scope of interference in exercise of powers under Article 226 of the Constitution of India with the award of the Industrial Adjudicator.

10. The Industrial Adjudicator in the earlier award dated 16th September, 1991 held that employment obtained by fraudulent misrepresentation could be terminated under Rule 5(1-A) of Civil Services (Classification Control and Appeal) Rules, 1965 and relied on ***Krishan Dev Puri Vs. UOI*** (1982) II LLJ 166 Del laying down that no domestic inquiry is required to be conducted where the discharge from service is *bona fide*. Of course, the said

award was set aside/quashed by this Court on 16th September, 2005 as aforesaid in the writ petition preferred by Smt. Chando Devi. However this Court set aside the award only on the ground of the principles of natural justice having not been complied with prior to the order of termination. Even though setting aside the award, this Court did not grant any relief of reinstatement or compensation in lieu of reinstatement to Smt. Chando Devi and which would have followed if termination had been found to be illegal. The fact that this Court remanded the matter to the Industrial Adjudicator shows that an opportunity was intended to be given to Smt. Chando Devi to satisfy the Industrial Adjudicator that she had not practiced any fraudulent misrepresentation while seeking employment. However Smt. Chando Devi was unable to prove the same before the Industrial Adjudicator. On the contrary from the documents filed by her legal representatives before the Industrial Adjudicator, the cause for termination/discharge from employment was fortified, rather it emerges that all these years Smt. Chando Devi was contesting the matter as to her age, while she was aware or had given her year of date of birth as 1943 to the Ration Card Authorities. The

entire conduct of Smt. Chando Devi is thus found to be *mala fide*. While before the Ration Card Authority she was claiming her year of birth to be 1943, in the present dispute, she was agitating that she had correctly given her year of birth as 1950. The Industrial Adjudicator has certainly committed a perversity in not considering the said aspect. The question of compliance with Section 25F would have arisen only if the employment of Smt. Chando Devi had been valid and any action based on an illegality or falsehood cannot be valid.

11. The respondents as heirs of Smt. Chando Devi can thus be not entitled to any benefits of the employment procured on illegality.

12. The petition is therefore allowed; the award of the Industrial Adjudicator is set aside/quashed. The amount deposited by the petitioner before this Court be refunded to the petitioner.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 18, 2011

bs

(corrected and released on 9th August, 2011)