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THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12th March, 2012

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+ LPA 1035/2011

CHATTARPAL SINGH

..... Appellant

Through: Mr. Varun Prasad

versus

INDIRA GANDHI NATIONAL CENTRE
FOR THE ARTS

..... Respondent

Through: Mr. A.K. Mishra, Adv.

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LPA 1036/2011

38.

SUNIL KUMAR

..... Appellant

Through: Mr. Varun Prasad

versus

INDIRA GANDHI NATIONAL CENTRE
FOR THE ARTS

..... Respondent

Through: Mr. A.K. Mishra, Adv.

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LPA 2397/2006

47.

RAJENDER KUMAR

..... Appellant

Through: Mr. Varun Prasad

versus

INDIRA GANDHI NATIONAL CENTRE
FOR THE ARTS

..... Respondent

Through: Mr. A.K. Mishra, Adv.

LPA Nos. 2413/06, 2397/06, 1035/11 & 1036/11

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48. LPA 2413/2006

MANOJ KUMAR

..... Appellant

Through: Mr. Varun Prasad

versus

INDIRA GANDHI NATIONAL CENTRE
FOR THE ARTS

..... Respondent

Through: Mr. A.K. Mishra, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE (ORAL):

1. All these appeals have common issue though facts relating to each case may be somewhat different. Since the principle of law which has to be applied also remains the same, we have heard all these cases together and are disposing of these appeals by this common judgment. However, we would like to advert to the facts, in brief, appearing in all these cases.

LPA 2397/2006

2. The appellant was employed on daily wage basis by the respondent, namely, Indira Gandhi National Centre for the Arts as a peon. He was initially engaged on 18.12.1992. After about three and a half years, his services were terminated by the respondent on 20.6.1996.

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The appellant raised industrial dispute challenging the aforesaid termination and also claimed appointment on regular basis. Following reference was made for adjudication by the Industrial Tribunal:

“(i) Whether the services of Shri Rajender Kumar s/o Shri Malik Raman have been terminated illegally and/or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect?”

“(ii) Whether Shri Rajender Kumar s/o Shri Malik Raman is entitled to be regularization in the proper pay scale and post with the management, if so, what directions are necessary in this respect?”

3. After completion of pleadings, both the parties led their evidence on both the terms of reference reproduced above. The Industrial Tribunal passed the award holding that the termination of the appellant was illegal and unjustified inasmuch as when he had worked for more than 240 days, even on daily wage basis, his services could not have been terminated without applying the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. However, while answering the second term of reference, the Industrial Tribunal concluded that the appellant had failed to show that persons junior to him had been regularized in Group-D post from the date of appointment or any other appointment. Accordingly, the Tribunal held that the appellant was not

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entitled to regularization and since he was daily wage workman, the Industrial Tribunal denied even the reinstatement and instead observed that an adequate compensation would meet the ends of justice. The Industrial Tribunal also observed that though the termination was in the year 1996, industrial dispute was raised only in the year 2002. A compensation of Rs.5000/- per annum for every completed year from the date of illegal termination till the date of award and a proportionate amount for the remaining uncompleted years was awarded. The appellant challenged this award by filing W.P. No. 12085/2006 which has been dismissed by the learned Single Judge vide order and judgment dated 31.7.2006 thereby affirming the award of the Industrial Tribunal. The present appeal is against the said order of the learned Single Judge.

LPA 2413/2006

4. The appellant Manoj Kumar was also engaged by the same management as peon on daily rate basis with effect from 6.6.1996. According to him, he worked in that capacity continuously up to 18.9.1996. However, thereafter the mode of payment was changed by the management and though he continued to work, the wages were paid in the fictitious name of one Sh. Rama Shankar Sharma. With effect

from 3.10.2001, the Management again started paying directly to the appellant and ultimately terminated his services with effect from 7.2.2002. The appellant raised industrial dispute challenging his termination and also claimed temporary status as well as equal pay for equal work from the date of initial employment. Following dispute was referred to the Industrial Tribunal:

(i) Whether the services of Sh. Manoj Kumar S/o Sh. Parsu Ram have been terminated illegally and/or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect?

(ii) Whether Sh. Manoj Kumar, S/o Sh. Parsu Ram is entitled to grant of temporary status in Group 'D' and equal pay for equal work from the date of his initial appointment and if so, to what relief is he entitled and what directions are necessary in this respect."

5. Number of issues were framed by the Industrial Tribunal. The Tribunal held that though the appellant had worked for more than 240 days and therefore his termination was illegal because of non compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947, qua second term of reference, the Tribunal refused to grant the temporary status holding that the appellant had not been able to show that any person junior to him had been regularized by the management.

As in the case of Rajendra Kumar, here also the Industrial Tribunal

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granted compensation in lieu of reinstatement in the same manner. The award of the Tribunal has been upheld by the learned Single Judge thereby dismissing the writ petition of the appellant which is subject matter of challenge in the present appeal.

LPA 1035/2011

6. In this case, the appellant was initially engaged as peon on day wage basis with effect from 15.2.1993. His services were terminated on 30.8.1996. The appellant raised the industrial dispute by approaching the Conciliation Officer and during the conciliation proceedings, the management reinstated the appellant with effect from 13.5.1997. In these circumstances, the dispute was referred to the Industrial Tribunal on the validity of termination in the following manner:

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

7. This reference was adjudicated by the Industrial Tribunal and that culminated in Award dated 22.7.2006 whereby the Industrial Tribunal held termination to be bad in law and granted reinstatement with full backwages and continuity of service. The management challenged this award by filing W.P. No.3701/2007 which has been allowed by the

learned Single Judge vide impugned judgment dated 19.8.2011. The learned Single Judge has modified the award by granting compensation in lieu of reinstatement and back wages. In this appeal, the said judgment of the learned Single Judge is assailed.

LPA 1036/2011

8. The appellant in this case was engaged as casual labour on 24.5.1993 and his services were terminated on 23.8.1996. He also raised industrial dispute before Conciliation Officer. This dispute was referred to the Labour Court which gave Award dated 5.12.2001 directing reinstatement with full backwages and continuity of service. The management challenged this Award by filing W.P. No.4280/2003. In this case also, in a similar manner, the learned Single Judge has passed the orders dated 5.9.2011 modifying the award for granting compensation in lieu of reinstatement and backwages and in these circumstances, this appellant has filed the present intra-court appeal questioning the validity of the orders passed by the learned Single Judge.

9. The facts of all the four cases would disclose the following common features:

(i) All these appellants were engaged on casual / daily wage basis.

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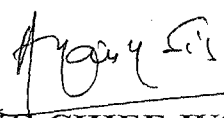
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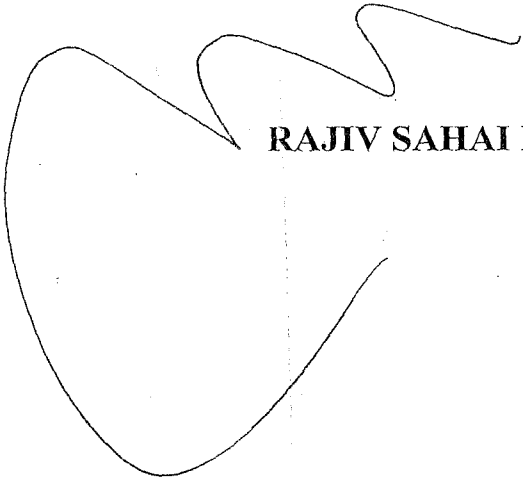
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- (ii) Their services were terminated without following the provisions of Section 25F of the Industrial Disputes Act, 1947 and because of this reason, the termination was held to be invalid.
 - (iii) Though the first two appellants, namely, Rajendra Kumar and Manoj Kumar had also raised the industrial dispute claiming regularization / temporary status, that relief was not granted by the Industrial Tribunal in their respective awards holding that no person junior to them had been regularized. Other two appellants did not even raise the dispute claiming any such regularization. Fact remains that no persons who are working on casual basis have been regularized by the management. All these persons had worked for same period on daily rate/casual basis in 1990s except one workman whose services were terminated in the year 2002.

10. In all these cases, management has given a statement before the learned Single Judge that as and when there would be work, the same would be offered to the appellants in the order of their seniority. A statement is made at the Bar by learned counsel for the management that the management is adhering to this statement made before the Court.

11. Once we find that these workmen had worked for short spells, that too on casual/daily rate basis and long back and when the workmen are not entitled to regularization having regard to the judgment of the Supreme Court in *Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.*, (2006) 4 SCC 1, we do not find any fault with the orders of the learned Single Judge passed in the writ petitions granting compensation in lieu of reinstatement.

We accordingly dismiss all these appeals.


ACTING CHIEF JUSTICE


RAJIV SAHAI ENDLAW, J

MARCH 12, 2012
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