

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

+ **W.P.(C) 3130/2006**

% Reserved on: 11th September, 2012
Decided on: 18th December, 2012

MAHESH Petitioner
Through: Mr. Varun Prasad, Advocate

versus

N.D.M.C Respondent
Through: Mr. Harshvardhan Singh Rathore and
Mr. Arun Bhardwaj, Advocates

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 22nd March, 2004 passed by the learned Presiding Officer, Industrial Tribunal in an industrial dispute bearing ID No. 22/2002 whereby the learned Tribunal held that the workman Petitioner is neither entitled to reinstatement with back wages and continuity of service nor regularization.

2. Learned counsel for the workman Petitioner contends that the services of the Petitioner were verbally terminated in July, 1994 without complying with the principles of natural justice. No notice was issued to the workman asking him to report for duty, no enquiry was conducted and no charge sheet was given to him before termination of his services. The order of termination was penal in nature and one camouflaged for serious misconduct. It was not a case of a simpliciter discharge or simple termination and the Management ought to have conducted an inquiry. Reliance is placed on *MCD vs. Praveen Kumar Jain and others*, (1999) LAB I.C. 619 (SC) and *Madhabananda Jena vs. Orissa State Electricity Board*

and others, (1990) 1 LLJ 463 Ori. It is further contended that during the period between 17th October, 1988 and July, 1995 the workman had completed more than 240 days and despite this, the Management has not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short 'ID Act') while terminating his services. The Petitioner was issued no notice, notice pay compensation etc. as required under Section 25F. The Management has also not complied with the provisions under Section 25G ID Act and cannot claim benefit of Section 2(o)(bb). Several juniors of the Petitioner such as Kamlesh, Arvind Kumar, Rishi Kumar, Kusum Lata and Agnri have been regularized w.e.f. 1st April, 1997, however, the services of the workman Petitioner were never regularized. Reliance is placed on *Harjinder Singh vs. Punjab State Warehousing Corporation, 2010 (3) 192, Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda, 2010 LAB IC 1089* and *The Director General Works, CPWD vs. Davinder Singh, LPA 13/2008* decided by this Court on 12th February, 2008. It is lastly contended that due to a typographical error in acquittal order dated 26th August, 2000 showing the date occurrence as 7th November, 1994 instead of 7th July, 1994, the learned Tribunal has wrongly come to a conclusion that the workman's services were not terminated in July, 1994 rather he himself did not report for duty in July and did not make any effort to resume his duty for seven months and thus he voluntarily abandoned his duties. Despite the fact that the Petitioner was taking all steps to resume his duties and even met the Section Officer of Management on 24th January, 1995 when the workman was released on bail asking him to take him back on duties, he was refused duty.

3. Per contra learned counsel for the Respondent contends that the Petitioner worked intermittently as a muster roll employee with the Management and not as a regular muster roll employee. The services of the Petitioner were availed of as per the requirement with the Respondent. Further, the workman never completed 240 days in the year preceding his termination. In fact, in 6 ½ year that he had worked with the Respondent he had completed only 728 days. Thus there was no need of compliance with Section 25F ID Act. Reliance is placed on *Range Forest Officer vs. S.T. Hadimani*, AIR 2002 SC 1147. The services of temporary muster roll employee were regularized in terms of their seniority. However, the seniority list was taken into consideration only when they were first taken on a regular muster roll. Since the Petitioner was only a temporary muster roll employee the regularization of his service was not considered by the Management. The learned counsel lastly contends that the workman has not produced any document to show that he was terminated from his services in July, 1994 or to show that he made any representation to the Respondent Management to take him back on duty after his alleged termination.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the case of the Petitioner is that he was initially employed as a muster roll Mali with the Respondent from 17th October, 1988. In July, 1994 due to his alleged involvement in a criminal case relating to Kamrela Village, Dadri he was arrested and sent to judicial custody and hence could not intimate the Management about his absence, as a result of which his services were orally terminated in July, 1994. On 24th January, 1995 he was released on bail thereafter he met Shri Chattar Singh, Section Officer of the Management asking him to allow him to join his duty. However, he was

informed by Mr. Chattar Singh that he cannot be allowed to join back unless he is completely exonerated from all criminal charges. The workman was convicted by the Trial Court on 12th December, 1996 against which an appeal was filed before the learned Additional District Judge which was decided in favour of the Petitioner on 26th August, 2000 by which the Trial Court decision was quashed and the Petitioner was acquitted. Several representations were made by the workman asking for his reinstatement with full back wages and continuity of services. However, the same were never replied by the Management. Thus the workman filed his statement of claim before the Assistant Labour Commissioner leading finally to a reference of an industrial dispute on the following terms:

- “1) Whether the services of Sh. Mahesh s/o Late Asha Ram 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 existing law/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”
- 2) Whether Sh. Mahesh S/o Late Asha Ram is entitled to regularization to the pay scale and post of Mali if so from which date and what directions are necessary in this respect?”

6. It is the persistent case of the workman that he was employed with the Management as a regular muster roll employee from 17th October, 1988 till the date of his termination. The workman in his cross-examination has stated that he is in possession of an identity card to show that he was on a regular muster roll, however, the workman has failed to produced any such document before the learned Tribunal. The workman further stated that he

had continuously worked with the Management from the date of his appointment till the date of his termination however, in his cross-examination he admitted that he had not worked continuously. He has stated that he had not worked for three or four months w.e.f. January, 1989 when all muster roll employees were given a break. Also he had not worked in May, 1989 and for five months in 1990 w.e.f. January, 1990 and again stated that he had not worked from January, 1990 till 20th August, 1990. He has also stated that he had not worked in December, 1990 as there was a general strike and that in 1991 and 1992, he had not worked for more than 20 days in any particular month and finally that he has not worked in January, 1994 also.

7. On the other hand, the Management witness (MW1) Mr. Chattar Singh has in his evidence by way of an affidavit stated that the workman was employed on a temporary muster roll as a mazdoor and was performing temporary nature of work and as soon as such work was completed the services of such temporary workers were automatically dispensed with. He has further stated that the workman performed his duties only on those days for which sanction of muster roll existed and was paid wages on daily basis for the actual days of performance of his duties with breaks in service upto 30th June, 1994. MW1 has also produced list Ex. MW1/1 showing the days on which the workman had actually worked with the Management. A perusal of Ex. MW1/1 show that the workman has not worked continuously from 17th October, 1988 till 30th June, 1994 rather during his entire term with the Management he has completed only 728 days with the Respondent.

8. In *R.M. Yellatti Vs. The Assistant Executive Engineer (2006) 1 SCC 106* the Hon'ble Supreme Court has held:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

9. In *Range Forest Officer vs. S.T. Hadimani* (supra) their Lordships have held:

“3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an “industry” or not, though reliance is placed on the decision of this Court in *State of Gujarat v. Pratamsingh Narsinh Parmar*, (2001) 9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.”

10. In fact a perusal of Ex. MW1/1 shows that the workman has not completed 240 days with Respondent in the year preceding his termination or in any particular year. The workman has also not cross-examined MW1 on the said exhibit or in any way proved before the learned Tribunal that the said document was forged or fabricated. Otherwise also, as per judgment of the Hon’ble Supreme Court in *R. M. Yellati* (supra) and *Range Forest Officer vs. S.T. Hadimani* (supra) the onus was on the workman to show that he had completed 240 days with the Management in the year preceding his

termination which he failed to discharge. Hence, he cannot claim benefit under Section 25F.

11. Learned counsel has further contended that the workman's juniors were regularized w.e.f. 1st April, 1997 however, his services were never regularized. He places reliance on the statement of MW1 in his cross-examination where he had stated that the muster roll employees were regularized in terms of their seniority. A perusal of the statement of MW1 would show that although he had said that the temporary workman were regularized in terms of their seniority however, he had also stated that before regularization the workman were first taken on a regular muster roll and then only their seniority was taken into consideration. The workman has in his cross-examination stated that he was engaged as a regular muster roll employee and that he had an I-card to the same effect. However, he has not produced the said I-card or any other document before the learned Tribunal to show the nature of his engagement. Further a perusal of Ex. MW1/1 reinforces the fact that the services of the workman were intermittently availed by the Management as per the requirement of the Management and the Petitioner was not a regular muster roll employee of the Respondent. Clearly, the workman cannot claim the benefit of regularization without first showing that he was a regular muster roll employee and was senior in rank to those he alleges to have superseded him in the year 1st April, 1997.

12. The contention of the workman that services of the workman were verbally terminated from 1st July, 1994 due to his involvement in a criminal case and further when he was released on bail on 24th January, 1995 he met Shri Chattar Singh asking him to allow him to rejoin his duty but was not allowed to do so is also without any basis. The workman has not produced

any document to show that his services were terminated on 1st July, 1994 and that he made any representation before the Management after he was released on bail. In fact the workman has stated in his cross-examination that he had not made a representation in writing and only on 11th October, 2000 he requested the management to take him back on duties. However, this document has also not been exhibited before the Tribunal. Clearly the workman has failed to show that he made any effort to resume his duties after his alleged termination. As against the management witness stated that monthly muster roll was prepared and when the muster roll of July 1994 was prepared the name of the Petitioner was not entered into as he was not present being in Police custody.

13. In the light of the above discussion, I find no infirmity in the impugned award granting no relief to the Petitioner. The petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 18, 2012
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