

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

+ **W.P. (C) No. 6098/2010**

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Reserved on: 22nd August, 2012
Decided on: 3rd September, 2012

MEGH RAJ SINGH AND ORS Petitioners
Through Ms. Rashmi Priya, Adv.

versus

ITDC LTD AND ANR Respondents
Through Mr. Amit Seth, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioners impugn the award dated 1st August, 2009 wherein it was held that the workmen had not worked for 240 days during the preceding 12 months and the services of the workmen were not terminated illegally or unjustifiably by the management and they were not entitled to any relief.

2. Learned counsel for the Petitioners contends that the Petitioners were working as peons/loaders/parkers/helpers with the Respondent. Petitioner No.1 was appointed on 10th April, 1991, Petitioner No.2 on 27th July, 1992, Petitioner No.3 on 25th November, 1991 and Petitioner No.4 on 27th October, 1994. The Petitioners continuously worked with the Respondent till their services were terminated on 14th June 2000, 12th January 2002, 26th January 2002 and 26th January 2002 respectively. The finding of the learned Trial Court is erroneous as 240 days have to be calculated in any year and not only

in the preceding year. Since the Petitioners had worked continuously and there was no misconduct on their part, their services were terminated illegally and they were thus entitled to the benefit under Section 25F of the Industrial Disputes Act (in short the ID Act). Reliance is placed on *Suraj Pal Singh & Ors. Vs. Presiding Officer Labour Court No.111 and Anr. 98 (2002) DLT 793; Annop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana) (2010) 5 SCC 497 and State of Karnataka & Ors. Vs. M.L. Kesari & Ors. (2010) 9 SCC 247.*

3. Learned counsel for the Respondent on the other hand contends that the decision of the learned Single Judge in *Suraj Pal Singh* (supra) was challenged in Letters Patent Appeal wherein the Division Bench of this Court held that 240 days have to be calculated within 12 months preceding the date of termination and not in any year. Further the job of the Petitioners was intermittent and hence they did not complete 240 days in the preceding 12 calendar months. As regards regularization, reliance is placed on *State of Karnataka and Ors. Vs. Uma Devi and Ors. (2006) 4 SCC 1* to contend that the persons, who are not regularly employed, are not entitled to the benefit. Hence, there is no illegality in the impugned award and the petition be dismissed.

4. I have heard learned counsel for the parties. As stated above, pursuant to the termination of the Petitioners, reference was made to the Tribunal on the following terms:

“Whether the services of Shri Megh Raj S/o Shri Tula Ram, 2. Shri Ashish Kumar, S/o late Shri Gaggi Bairia, 3. Shri Mangat Ram, S/o Shri Mukundi Lal and 4. Shri Gopal Singh, S/o Shri Tule Ram have been terminated illegally and or unjustifiably by

the management and, if so what sum of money as monetary relief along with consequential benefit in terms of existing law/ Notification and to what other relief are they entitled and what directions are necessary in this respect?”

5. In the statement of the claims filed by the Petitioners it was contended that they were employed with the management at various posts for various periods and they had applied for regularization of their services but the management not only failed to regularize their services rather terminated their services. There was no complaint against the Petitioners. They had completed 240 days of service in each calendar year and were lawfully entitled to be regularized against the posts of Loader, Peon and Helper. The work they performed was of regular nature. Their termination being in violation of Section 25F of the ID Act, they are entitled to reinstatement with full back wages and other benefits. In the written statement filed by the Respondent it was contended that the Petitioners were engaged on ad-hoc basis as daily wage earners. Since they had not completed 240 days of continuous services with the management they were neither entitled to protection under Section 25F nor regularization. The learned Tribunal decided all the issues against the Petitioners.

6. The main issue urged before this Court is whether the Petitioners have been able to prove that they had worked continuously for a period of 240 days in the preceding 12 calendar months as required under Section 25B(2) of the ID Act. A perusal of the evidence on record shows that the Petitioners were not issued any appointment letter and they were employed as daily wagers and paid salary on the basis of actual days they had worked. Thus, the appointments of the Petitioners were purely on ad-hoc basis as

daily wagers. The onus to prove that the Petitioners worked for 240 days in the preceding 12 months was on the Petitioners in view of the decision of the Hon'ble Supreme Court in *R.M. Yellatti Vs. Asstt. Executive Engineer 2005 IX AD (SC) 261*. It may be noted that in the statement of claim the Petitioners have initially stated that they had worked for 240 days in each calendar year and were lawfully entitled to the posts of Loader/Helper (in Group 'D')..

7. A perusal of the documents show that nothing has been placed by the Petitioners to prove that they have worked for 240 days in the preceding 12 calendar month. As per the Respondent the names of the Petitioners were not even on muster roll nor were they subjected to disciplinary control, since the engagement of Petitioners was need base and they were provided work as and when available. No appointment letters were given to them. In view of intermittent nature of work, no posts of Loader etc. were created. I find that there is no error committed by the learned Trial Court in coming to the conclusion that the Petitioners have failed to discharge the initial burden cast on them in terms of the decision of the Supreme Court in *R.M. Yellatti Vs. Asstt. Executive Engineer* (supra).

8. I find no merit in the contention of the learned counsel for the Petitioners that the 240 days could be in any calendar year as this issue has already been set at rest by the Division Bench of this Court in *Suraj Pal Singh v. the Presiding Officer and another, 124 (2005) DLT 248* wherein it was held:

“29. Sub-section (2) of Section 25B also incorporates a deeming fiction. As per sub-section (2) to Section 25B, if a

workman has worked for 240 days or 190 days (in case he is employed below ground in a mine) during the period of 12 calendar months preceding the date with reference to which calculation is to be made, he shall be deemed to be in continuous service for a period of one year. In case of a retrenchment, the reference date will be the date on which the retrenchment order is passed. Therefore, if a workman has worked for 240 days (190 days in case he has worked below ground in a mine) during the period of 12 calendar months preceding the date of his retrenchment, the said workman is deemed to have rendered continuous service for a period of one year. Section 25B(2) refers to a period of 12 months immediately preceding and counting backwards from the relevant date and not to any other period of employment. If a workman has worked for more than 240 days during this period of 12 months prior to his retrenchment, he is deemed to be in continuous service for a year. The words "preceding the date with reference to which calculation is to be made" are not redundant or otiose. The period of 12 months mentioned in Section 25B(2) is not Therefore any period of 12 months but the immediately preceding 12 months with reference to which calculation is to be made."

8. Thus the petition is dismissed being devoid of any merit.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 03, 2012

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