

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

% Judgment reserved on : 22.02.2013
Judgment pronounced on : 04.03.2013

+ **LPA No. 59/2008**

P.K. SHARMA

..... Appellant

Through: Mr. D.N. Goburdhan and
Ms Ankita Mishra, Advs.

versus

MUNICIPAL CORPORATION OF DELHI

.... Respondent

Through: Ms. Mini Pushkarna and
Ms Shantanu Tyagi, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Vide office order dated 26.03.2001, issued by Municipal Corporation of Delhi, the appellant was appointed to the post of Data Entry Operator in the Assessment and Collection Department, on ad hoc basis, in the pay scale of Rs 4500-125-7000 and was posted in the Computer Cell at Minto Road, New Delhi. It was directed that he would draw his salary against the vacant post of Head Clerk at SAU Minto

Road. Alleging that he was not allowed to mark his attendance with effect from 05.02.2004, the appellant raised an industrial dispute, which was referred to the Labour Court for adjudication. Vide order dated 11.10.2006, the Labour Court held that since the appellant was appointed on ad hoc basis for specific purpose and there was no sanctioned post and no notified Recruitment Rules, he was not entitled to reinstatement and regularization on the post of Data Entry Operator. Being aggrieved from the Award of the Labour Court, the appellant filed WP(C) No. 18186/2006, which came to be dismissed vide order dated 30.11.2007. The said petition having been dismissed, the appellant is before us by way of this appeal.

2. The contention of the learned counsel for the appellant is that since the appellant worked for a continuous period of more than 240 days before termination of his services and no notice and compensation, as required by Section 25F of the Industrial Disputes Act, was given to him, the retrenchment of the appellant was illegal and consequently, he is liable to be reinstated with full back wages. The contention of the learned counsel for the respondents, on the other hand, is that since the appellant was appointed purely on ad hoc basis, dispensing with his services does

not amount to retrenchment, in view of the provisions contained in Section 2(oo)(bb) of the Act. She also submitted that there is no sanctioned post of Data Entry Operator in MCD and no Recruitment Rules for any such post have been notified.

3. Section 2(oo)(bb), to the extent it is relevant, reads as under:-

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein”

It would thus be seen that clause (bb) would apply only to a case where the services of a workman are terminated on account of non-renewal of a contract of employment between him and his employer, on expiry of the term of such a contract or the contract under which he is appointed contains a stipulation for termination of his services and the services are terminated in exercise of such stipulation in the contract of employment.

4. A perusal of the Office Order dated 26.03.2001 would show that it does not stipulate any particular term for appointment of the appellant.

Therefore, this is not a case of the workman being retrenched on expiry of the term of the contract under which he was employed. It would also be seen from a perusal of the said Office Order dated 26.03.2001 that it contains no specific term for terminating the service of the appellant. While issuing the said Office Order, the respondent did not stipulate that the services of the appellant were liable to be dispensed with any time, without assigning any reason. In any case, no order was passed by the respondent, referring to the appointment letter issued to him and terminating the services in terms of the said letter. He was asked, by an oral order not to mark his presence. Such an act cannot be said to be an order in terms of a term contained in the appointment letter.

Therefore, it cannot be said that the case of the appellant was covered under clause (bb) of Section 2 (oo) of the Act.

5. It is an undisputed proposition of law that an ad hoc appointment does not give any right to the employee to seek regularization and it is well within the competence of the Appointing Authority to terminate an ad hoc appointment at any point of time, without assigning any reason. But, when it comes to an employee, who is also a workman within the meaning of Section 2(s) of the Act and who has put in continuous service

of at least 240 days, the termination of his services would be illegal unless such an order can be justified under clause (bb) of Section 2(oo) of the Act. Once it is shown that a workman was employed for a continuous period of 240 days or more and his retrenchment is not covered by Section 2(oo)(bb), such a retrenchment would be illegal in the eyes of law, irrespective of whether the workman in question was appointed on ad hoc basis or otherwise and whether he was working against a sanctioned post or not.

6. The learned counsel for the respondent, in support of her contention that since the appellant was appointed on ad hoc basis and there was no sanctioned post of Data Entry Operators in MCD, his services could be dispensed with at any time, without any notice or compensation, has relied upon the decision of Supreme Court in **Madhyamik Shiksha Parishad, U.P. vs. Anil Kumar Mishra**, AIR 1994 SC 1638. A perusal of the said judgment would show that the respondents in that case were engaged for the work of preparing certificates to be issued by the appellant to the successful candidates at the examination conducted by it. The certificates were printed forms and respondents were required to fill up the particulars such as the

name of the candidate, name of the school, date of birth etc. in the appropriate space. The respondents were paid initially Rs. 12/-for 100 certificates which was subsequently raised to Rs. 20/-. That there was a back-log of certificates to be cleared and the services of the respondents were engaged to clear that back-log on payment ad quantum. The backlog having been cleared and the preparation of the certificates in future having been computerised, the services of the respondents were not continued to be utilised. The respondents did the work of clearance of the back-log for a period ranging from one to two years before the assignment was discontinued.

Noticing that there was no sanctioned post in existence to which the respondents could be said to have been appointed and the assignment was an ad hoc one which had spent itself out, the Court was of the view that the respondents were not entitled to regularization. In this context, the Court observed that completion of 240 days work does not import the right of regularization and it merely imposes certain obligations on the employer at the time of termination of the services. The appeal was disposed of on the concession of the appellants to consider the cases of those 27 respondents, who were petitioners before the High Court for the

purpose of recruitment to the post of Lower Division Clerk as and when vacancies arose and steps for filling up of those posts were taken up by the appellant. Thus, in this judgment, Supreme Court did not take the view that even if there is violation of the provisions contained in Section 25F of Industrial Disputes Act, the consequences, arising from such violation, would not follow in the case of an ad hoc employee. In fact, the observation that “it merely imposes certain obligations on the employer at the time of termination of the service” implies that while retrenching a workman who has completed 240 days of service, the employer is required to comply with the requirements of Section 25F of the Act. Of course, it cannot be said that an employee is entitled to regularization merely on account of his having rendered continuous service of 240 days or more.

7. The learned counsel for the respondent has also referred to **Nagar Mahapalika vs. State of U.P.**, (2006) 5 SCC 127, **Haryana State Electronics Development Corporation vs. Mamni**, AIR 2006 SC 2427, **Surrendera Kumar Sharma vs. Vikas Adhikari and Anr.** (2003)5 SCC 12, **Talwara Coop. Credit and Service Society vs. Sushil Kumar** (2008) 9 SCC 486, **State of H.P. vs. Suresh Kumar Verma and Anr.** (1996) 7 SCC

562. However, in none of these judgments, the Court has said that the services of an ad hoc workman can be dispensed with without complying the requirement of Section 25F of the Act.

8. The next question which comes up for consideration is as to whether the appellant should be reinstated in service or should be paid compensation in lieu of reinstatement. A perusal of the Office Order dated 26.03.2001, where the appellant was appointed on ad hoc basis would show that he was to draw salary against the vacant post of Head Clerk at SAU Minto Road. This clearly indicates that there was no sanctioned post of Data Entry Operator in MCD and that is why the appellant was to draw his salary against a vacant post of Head Clerk. The case of the respondent is that since there is no post of Data Entry Operator in MCD, there could be no question of any Recruitment Rules being framed for making appointment to the said post. The appellant has not been able to show that he was appointed against an existing post of Data Entry Operator and there is no material on record to show that any Recruitment Rules have been framed by MCD for making appointment to the post of Data Entry Operator. Admittedly, the appellant did not undergo any process of selection before he was appointed as Data Entry

Operator on ad hoc basis. This is also the case of the respondent that the services of the appellant are no more required by MCD. According to the respondent, they do not have a sanctioned post of Data Entry Operator.

9. This is by now more or less settled proposition of law that even in a case where a workman is retrenched in violation of the provisions contained in Section 25F of the Act, the Court may, in appropriate cases, award compensation, instead of directing reinstatement of the workman with or without back wages. The question whether the workman should be reinstated in service or paid compensation in lieu reinstatement with or without back wages depends upon a number of factors such as (a) the period of the service rendered by him; (b) the nature of his appointment as to whether it was permanent/temporary/regular/ad hoc/on daily wage basis; (c) whether the workman was appointed following due process of selection in accordance with the prescribed Recruitment Rules or not; (d) whether the workman was appointed against a duly sanctioned post or not; (e) whether there is an existing post against which the workman can be reinstated and (f) the time period which has elapsed since retrenchment of the workman.

However, there is no principle having universal application that the Tribunal or the High Court must necessarily direct reinstatement with or without back wages or must necessarily award compensation in lieu of reinstatement. Every case will have to be determined taking into consideration all the facts and circumstances, prevalent in the case under consideration.

In **Mahboob Deepak v. Nagar Panchayat, Gajraula** (2008) ILLJ 855 SC, Supreme Court held that the following factors are relevant for determining this issue:-

“7. The factors which are relevant for determining the same, inter alia, are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;
- (ii) the period he had worked;
- (iii) whether there existed any vacancy; and
- (iv) whether he obtained some other employment on the date of termination or passing of the award.

In **Asst. Engineer, Rajasthan Dev. Corporation and Anr. v. Gitam Singh** Civil Appeal No. 8415/2009, decided on 31.01.2013, Supreme Court, after considering its various earlier decisions on the subject, *inter alia*, observed as under:-

“26. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief.”

In the aforesaid case, the workman, who had worked on daily wages for about one year, was awarded compensation of Rs 50,000/-.

10. In **Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.** (2009) 15 SCC 327, the workman was employed on daily wage basis and had worked for one year and two months. Instead of directing reinstatement, with or without back wages, Supreme Court awarded compensation, amounting to Rs 50,000/- to him.

In **Sita Ram v. Moti Lal Nehru Farmers Training Institute** (2008)

11LLJ 688 SC, Supreme Court, considering the period during which the services were rendered by the workmen, the fact that the employer had stopped its operations and the services were terminated in the year 1996, held that the case before it was not a fit case for directing reinstatement in service and directed payment of compensation of Rs 1,00,000/- to them.

In **Ghaziabad Development Authority and Anr. v. Ashok Kumar**

and Anr. (2008) 4 SCC 261, the workman was appointed on daily wages of Rs 17/- per day, without there being a sanctioned post and had worked for six years on such a post. Supreme Court directed payment of compensation, amounting to Rs 50,000/- to him.

In **Municipal Corporation v. Ram Pal** 2007 (115)FLR 284, the

workman was appointed on ad hoc basis. The services of the workman were terminated in the year 1992. Noticing that even if she was reinstated in service on ad hoc basis, her services could not be regularized in view of Constitution Bench decision in **Secretary, State of Karnataka and others v. Uma Devi and others** 2006 (II) LLJ 722 SC, the Court directed payment of compensation, amounting to Rs 25,000/- to her in place of reinstatement with back wages.

In **Haryana Urban Development Authority v. Om Pal** (2007) 5 SCC 742, Supreme Court, noticing that the workmen had worked for a very short period set aside the award directing his reinstatement with back wages and award compensation, amounting to Rs 25,000/- to him.

In **Bharat Sanchar Nigam Limited v. Man Singh** (2012) 1 SCC 558, the services of the workmen, who were daily wagers during the year 1984-85 were terminated, without following Section 25F. They raised an industrial dispute after about 05 years. The Labour Court directed their reinstatement and the award was upheld by the High Court. Setting aside the reinstatement, Supreme Court directed payment of compensation to them, holding that the case of a daily wager was required to be distinguished from a workman who was a permanent employee.

11. The appellant before us was appointed on ad hoc basis, he worked as an ad hoc employee for about three years, he was not appointed against a sanctioned post, he did not undergo any process of selection and there is no sanctioned post of Data Entry Operator against which he could be reinstated. Considering all these facts and circumstances, while setting aside the order passed by the learned Single Judge, as well as the award of the Industrial Tribunal, we direct the respondent to pay a sum of

Rs3,00,000/- as compensation to the appellant in lieu of reinstatement with or without back wages, within four weeks from today.

The appeal stands disposed of. There shall be no order as to costs.

V.K.JAIN, J

CHIEF JUSTICE

MARCH 04, 2013
BG

