

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

**Judgment reserved on: 17.05.2013**

% **Judgment delivered on: 01.07.2013**

+ **W.P.(C) 5864/2011**

RAKESH MUNI TYAGI ..... Petitioner  
Through: Mr. Anuj Aggarwal & Mr. Sachin  
Sharma, Advocates.

versus

DTC ..... Respondent  
Through: Mr. Parmod Kumar, Advocate.

**CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI**

**J U D G M E N T**

**VIPIN SANGHI, J.**

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the industrial award dated 02.09.2008 passed in I.D. No.131/2005 by the Industrial Tribunal-II, Karkardooma Courts, Delhi, whereby the Industrial Tribunal has answered the reference made to it by the Appropriate Government on 08.08.2005 against the petitioner workman and in favour of the respondent management. The reference made to the Industrial Tribunal by the Appropriate Government reads as follows:

*“Whether the termination of Sh. Rakesh Muni Tyagi S/o Sh. Mangat Ram Tyagi from services is illegal and/ or unjustified*

*and if so to what relief is he entitled and what directions are necessary in this respect?*

*Whether the demand of Sh. Rakesh Muni Tyagi S/o Sh. Mangat Ram Tyagi for regularization in the services on the post of R.C. Conductor w.e.f. his date of joining in service i.e. 07.08.1998 alongwith all consequential benefits at par regular R.C. Conductor is unjustified and if so to what relief is he entitled and what directions are necessary in this respect?”*

2. The case of the petitioner was that he joined the employment of the respondent management as Retainer Crew Conductor w.e.f. 07.08.1998. He was treated as monthly paid/muster roll employee and was paid his wages – which were fixed and revised from time to time under the Minimum Wages Act. In September 2002, an F.I.R. was registered being F.I.R. No.354/2002 against the petitioner under Section 308/34 I.P.C. at Police Station Vikas Puri. He was arrested in connection with the said F.I.R. on 02.09.2002. He was able to join his services on 12.09.2002 and worked continuously till 29.10.2003, i.e., for more than a year - when his services were terminated on 29.10.2003 vide letter dated 28.10.2003. In this background the petitioner claimed reinstatement and regularization in service w.e.f. 07.08.1998, parity in pay scale and allowances with his counterparts working on regular basis.

3. The stand taken by the respondent management in their written statement, inter alia, was that the appointment of the petitioner was purely on temporary basis as Retainer Crew Conductor, which was dispensed with w.e.f. 29.10.2003 under Para IV of the Executive Instructions. An issue was also raised regarding the petitioner's arrest for more than 8 days for which he did not give any information to the respondent. The respondent claimed that no inquiry was called for before termination of the service of a Retainer

Crew Conductor, since the termination was on the basis of the terms & conditions of appointment. The parties led their respective evidence before the Tribunal. The Tribunal examined the letters dated 04.08.1998 & 05.08.1998, which contained the terms & conditions of employment of the petitioner. In respect of the terms & conditions, the Tribunal observed as follows:

*“.....Its perusal reveal that the workman Rakesh Muni Tyagi was engaged as daily wage Retainer Crew Conductor and was being paid wages as per Minimum Wages Act revised from time to time by the appropriate government. It is settled law that daily wage worker has no legal right or lien of a post. The management corporation is a government organization and it has its own Recruitment Rules for the employment of employees on different posts which it is required to follow. It is not the case of the workman that that rules were followed in his case before his appointment as Retainer Crew Conductor. In other words, the workman Rakesh Muni Tyagi was engaged as daily wage employee without following the regular recruitment process for the post concerned. The question whether the services of such like employees can be regularized came up before the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others (2006) 4 Supreme Court Cases 1.....”*

4. By placing reliance on ***Secretary, State of Karnataka & Others Vs. Umadevi & Others***, AIR 2006 SC 1806, the Tribunal held that the petitioner was not entitled to regularization of his service. This finding of the Tribunal, in my view, is unexceptionable. It is not the petitioner's case that his appointment was made in terms of the recruitment rules through a public recruitment process. He was merely a Retainer Crew Conductor, i.e., he was

offered service on daily basis. He was being paid only on daily basis whenever his services were availed of.

5. So far as the aspect of dispensation/termination of the petitioner's service is concerned, the Tribunal observed:

*“..... As mentioned in those letters dated 4th and 5th August, 1998, which form the basis of the workman's engagement vide letter Ext. WW1/8, the management under clause para IV of the Executive Instructions has every right to dispense with his services in time without notice etc. Therefore, order of his services being dispensed with under clause IV of that letter cannot be said to be illegal and unjustified.*

*11. A.R for the workman has relied upon a decision by the Hon'ble Apex Court reported as Dipti Prakash Banerjee Vs. Satyendera Nath Bose National Centre for Basic Sciences, Calcutta and Others (1999) 3 Supreme Court Cases 60. I have gone through the said case law. With due respect to Their Lordships, it is stated that the same does not help the workman in any manner.*

*Rather the proposition of law laid down by Their Lordships is in favour of the management. In that case the appellant was appointed as Office Superintendent on 11.01.1995. His services were terminated during the probation period without holding domestic enquiry. Therein Their Lordships held as under :-*

*“If findings are arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, simple order of termination is to be treated as 'founded' on the allegations and will be bad. If however enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and*

*the order would not be bad. Similar is the position if employer did not want to enquire into truth of allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be motive and not foundation and simple order of termination would be valid.”*

*Their Lordships further held as under :-*

*“Material which amounts to stigma need not be contained in termination order of a probationer but might be contained in documents referred to in the termination order or in its annexures. Such documents can be asked for, or called for, by any future employer of the probationer. In such a case, employee's interests would be harmed and therefore termination order would stand vitiated on the ground that no regular enquiry was conducted.”*

*In the case in hand also management did not want to continue the workman who had concealed the factum of his police detention of eight days in a criminal case under Section 308/34 IPC registered at Police Station Vikas Puri vide FIR No. 354/02. This fact is not disputed by the workman in any manner whatsoever. Management was fully justified in dispensing with his services by issuing the letter Ext. WW1/9 dispensing his services w.e.f 29.10.2003. The management has not used those allegations regarding his arrest and detention for eight days in a criminal case under Section 308/34 IPC as foundation of his dispensation from services and the letter does not refer to any such allegations.”*

6. The submission of learned counsel for the petitioner is that the termination of the petitioner's service amounted to retrenchment since the petitioner had completed 240 days of service in the year preceding his

termination. It is argued that the present case is not covered by the exceptions contained in clause (bb) of Section 2(oo) of the Act.

7. On the other hand, learned counsel for the respondent submits that the termination of the petitioner's service did not amount to retrenchment. In support of his submission, learned counsel for the respondent has sought to place reliance on the judgment of the Supreme Court in **Rajasthan State Road Transport Corporation & Others Vs. Zakir Hussain**, (2005) 7 SCC 447. Reliance has also been placed on **GRIDCO Limited & Another Vs. Sri Sadananda Doloi & Others**, AIR 2012 SC 729 (Civil Appeal No. 11303/2011 decided on 16.12.2011). Learned counsel for the respondent also places reliance on the Division Bench judgment of this Court in **Delhi Transport Corporation vs. The Presiding Officer, Labour Court-I & Another**, LPA No.802/2003 decided by this Court on 19.03.2012.

8. The Executive Instructions regarding the employment of Retainer Crews has been placed on record. Some of the clauses which are relevant in this Executive Instructions read as follows:

*“..... They apply only to the daily-rated operational crews of the Buses Division of the Delhi Transport Undertaking.*

*x x x x x x x x x*

*Definition: 2. In these instructions, unless the context otherwise requires “Retainer Crews” mean the daily-rated drivers and conductors and appointed and declared as such by the Undertaking and posted to work at any of its Units, as distinguished from the monthly-rated drivers and conductors.*

*x x x x x x x x x*

vii) *If, on any day any member of the retainer crew is not put on duty and does not earn the full wages prescribed in clause (v) above, or half wages as prescribed in clause (vi) (a) above, retainer allowance as indicated below shall become payable to him subject to fulfillment of the conditions set forth under this clause:-*

*Driver ..... One rupee per day per head.*

*Conductor....One rupee per day per head.*

*(a) If he does not refuse duty offered to him by the officer under whom he is posted to work at the Unit at which he is posted or at any other Unit to which he may be directed.*

*(b) If he reports at the Unit to which he is attached at the time or timings fixed by the officer under whom he is posted to work and waits there for duty for a period not less than eight hours on any day continuously or intermittently as may be laid down by the said officer. For the purpose of calculation of this period, the time taken for travel from one Unit to another as may be roughly assessed by the officer concerned shall be taken into account. No retainer allowance shall be payable if the total waiting period is less than 8 hours on any day.*

*x      x      x      x      x      x      x                      x      x*

*xiv) The services of the retainer crews can be dispensed with by the Undertaking without notice and without assigning any reason. Further their services can also be dispensed with if they fail to turn up at the Units or perform duty as laid down in these instructions for five days continuously, without permission of the officer under whom they are working and without adequate reasons.*

*x      x      x      x      x      x      x                      x      x*

*Absorption of retainer crews in the monthly rated establishment: 6. The retainer crews will be absorbed in the monthly rated temporary establishment of drivers and*

*conductors as the case may be of the Delhi Transport Undertaking in order of merit, seniority and conduct and performance while working as a retainer crew, as quickly as possible subject to temporary or permanent vacancies on monthly rates of pay in the respective categories..... ..”*

9. The appointment letter dated 04.08.1998 issued by the respondent to the petitioner offering the post of Retainer Crew Conductor for a temporary period contains, inter alia, the following conditions:

*“5. His appointment as R/C Conductor is purely on temporary basis. His services can also be dispensed with at any time without notice and without assigning any reason whatsoever in this regard.*

*6. He will be paid wages for the days he actually performs duty according to the prescribed rates from time to time.”*

10. The Executive Instructions above extracted show that the Retainer Crew is not engaged on a monthly basis. The engagement is only as a daily wager – their services being utilized only in the event of the deployed Driver/Conductor being absent. That is why they are distinguished from monthly rated Drivers & Conductors.

11. Clause (vii) of the Executive Instructions extracted above shows that the Retainer Crew may not be put on duty on a given date and, in that eventuality, he would not earn the wages as prescribed in clauses (v) & (vi) in the said instructions. He is paid nominal retainer allowance, subject to the compliance of the conditions mentioned in clause (vii).

12. Clause (xiv) explicitly states that the services of the Retainer Crew can be dispensed with by the undertaking without notice and without

assigning any reason. Their services can also be dispensed with if they fail to turn up at the Units or perform the duty as laid down in these instructions for five days continuously, without permission of the officer under whom they are working and without adequate reasons. Retainer Crew are absorbed on monthly rated temporary establishments of Drivers and Conductors in order of merit, seniority, conduct and performance.

13. A perusal of the aforesaid instructions as well as clauses 5 and 6 of the appointment letter dated 04.08.1998 issued to the petitioner offering the post of retainer crew driver for a temporary period leaves no manner of doubt that the termination of the services of the petitioner has been undertaken under a stipulation in that behalf contained in the conditions applicable to the petitioners appointment. The termination of the petitioners service, therefore, does not tantamount to retrenchment as defined in section 2(oo) of the Act since it is covered by the exception carved out in clause (bb) thereof. The mere completion of 240 days of service in the year preceding the petitioners termination does not vest the petitioner with the right to claim compensation under section 25F of the Act, since the terms of appointment in no uncertain terms made it clear that:

- i) The appointment was as a daily rated conductor and not a monthly rated conductor;
- ii) It was not necessary for the respondent to take from the petitioner, even when he offered himself for service, on any given day and all that he was entitled to, subject to fulfillment of certain conditions was retainer allowance;

- iii) The services of retainer crew conductor could be dispensed with without notice and without assigning any reason;
- iv) The absorption of the retainer crew conductor in the monthly rated establishment was dependant upon, inter alia, the conduct and performance of the conductor while working as a retainer crew. Therefore, the conduct and performance of the petitioner was under watch i.e. he was on probation for being considered to be placed as a monthly rated temporary establishment conductor.

14. The termination of the services of a probationer does not tantamount to retrenchment as held by me in the judgment delivered in W.P. (C) No. 5311/2000 and other connected writ petitions today.

15. In the light of the aforesaid discussion, I find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

**(VIPIN SANGHI)**  
**JUDGE**

**JULY 01, 2013**