

R-14

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

Date: April 21, 2014

+ W.P.(C) 870/2003

A.I.I.M.S. NEW DELHI

.....Petitioner

Through

Mr.Razat Katyal and Mr. Rishab
Kaushik, Advocates.

versus

UDDAL & ORS.

..... Respondent

Through

Mr.Ashok Gurnani, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(Oral)

1. The present writ petition is filed challenging the Award dated 30.03.2002 passed by the Labour Court holding that the workmen in question Shri Uddal Singh and Sh. Desh Pal have put in more than five years and four years of continuous service respectively under the Management when their services were terminated and that they are entitled to protection under Section 25 F of the Industrial Disputes Act, 1947.

2. The workman Uddal Singh (respondent No.1) states that he joined employment of the petitioner on 21.01.1987 as daily wager 'Beldar' in the Engineering Services Department where he is stated to have worked up to 21.02.1992 continuously without any break. He states that he has put in more than 240 days of actual work in each completed year of service. His services were terminated vide oral order.

3. The other workman Desh Pal (respondent No.2) claims to have joined the petitioner on 21.03.1988 and makes the same submission of having put in more than 240 days of service in each year. He also served upto

21.2.1992.

4. Respondents No.1 and 2 raised an industrial dispute which was referred for adjudication to the Labour Court. The references were disposed of by a common judgment inasmuch as common question of facts and law were involved.

5. The reference by the Government of NCT of Delhi regarding the case of Uddal Singh reads as follows:-

“Whether the services of Sh.Uddal 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 regard.”

6. Reference for Sh. Desh Pal is also the same.

7. On 06.01.1995 the Labour Court framed common issues which reads as follows:-

“1. Whether the petitioner is a workman and the management is an industry as defined under the I.D. Act?
2. As in terms of reference.”

8. In Uddal Singh’s case (respondent No.1) the workman filed his own evidence i.e. being Ex. WW-1. The petitioners filed evidence of Mr.R.K.Gangal as Ex. MW-1. In the case of Sh. Desh Pal (respondent No.2), the said respondent also filed his own evidence and Sh. R.K. Gangal was examined as MW-1.

Later on the petitioner also filed the evidence of Mr.Suresh Bhaskar as MW-2 in both the cases.

9. As far as issue No.1 is concerned, namely, as to whether the respondents are workmen, the Labour Court held respondents No.1 and 2 to be workmen. It also held the petitioner to be an industry as defined within the meaning of Industrial Disputes Act.

10. On the main merits of the case, the impugned Award holds that respondents No. 1 and 2 have been in continuous service for 5 and 4 years respectively and on 21.02.1992 their services were terminated. It was further held that each workman has put in more than 240 days of actual work and is entitled to protection under Section 25 F of the Industrial Disputes Act. It was also held that it is not the case of the petitioners that at the time of termination of services of the workmen, any of the mandatory conditions specified in Section 25 F of the Act have been complied with. In view of the said findings, the impugned Award holds that the workmen are entitled to reinstatement with full back wages and continuity of service. The Award holds that there are specific assertions of facts made by the respondents workmen regarding their period of employment which the Management have simply denied without specifying the exact date of engagement and exact date of termination and hence, the denial is utterly vague and no denial in the eyes of law.

11. Learned counsel for the petitioner has raised two submissions. He firstly submits that the finding recorded by the Labour Court that the petitioner is an industry is erroneous. He submits that the definition of industry as propounded by the Supreme Court in the case of ***Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors., (1978) 2 SCC 213*** was referred to a Larger Bench and this Court should wait for the decision of the Larger Bench of the Hon'ble Supreme Court.

12. He secondly submits that the onus to prove that the workman had worked for 240 days is on the respondent workmen. He relies upon the judgments of ***Range Forest Officer vs. S.T.Hadimani, (2002) 3 SCC 25*** and ***Surendranagar District Panchayat and Anr. vs. Jethabhai Pitamberbhai, JT 2005 (9) SC 163*** to contend that it is for the workman to prove that he

has worked for 240 days in a year preceding his termination by appropriate proof of salary and wages or record of appointment or engagement, etc. and that mere averment on oath would not be sufficient.

13. Learned counsel appearing for the respondents has refuted the contention of the petitioner. He submits that as far as the issue of industry is concerned, this High Court has already held that the petitioner i.e. All India Institute of Medical Sciences is an industry and there is no stay order against the said judgment or of the matter or any interim orders to the contrary.

14. On the issue of onus, he relies upon the judgments of the Supreme Court in the case of ***Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda***, (2010) 1 SCC 47 and ***M/s. Sriram Industrial Enterprises Ltd. v. Mahak Singh & Ors.***, AIR 2007 SC 1370 to contend that the subsequent judgments of the Hon'ble Supreme Court have held that the burden of proving that the workman has worked for 240 days in a year is discharged upon the workman adducing cogent evidence. The Court also noticed that in most cases workmen can only call upon the employer to produce the muster roll for the period in question, letter of appointment, proof of payment of wages, etc. as no letters of appointment are issued, wages would be paid in cash and hence the workman would have no such record in his possession. It is stated that in the case of ***Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda (supra)*** the court accepted the statement of workman that he worked for 240 days prior to the date of termination as sufficient proof. Hence, he submits that there are no grounds to interfere with the Award passed by the Labour Court.

15. It may be noted that the matter was referred to Lok Adalat where Mr. Attar Singh, Chief Administrative Officer of the petitioner had pointed out that Mr. Uddal Singh, respondent No. 1 has already been given the status

of temporary employee and that he will be considered for regularization as per the policy of AIIMS in due course. The second respondent, Desh Pal expired on 11.12.2004. The legal heirs of the said deceased respondent No. 2 were permitted to be brought on record vide order dated 25.08.2006.

16. Regarding the first contention of the learned counsel for the petitioner, a Division Bench of this Court in the case of ***A.I.I.M.S. vs. Raj Singh, 2009 (1) LLJ 499*** has already held that the petitioner is an industry within the meaning of Industrial Disputes Act. Further, in that case the Court did not accept the submission that it should await the judgment of the larger Bench. There is no reason to take a different view here.

17. Coming to the second contention, it would be necessary to first look at the pleadings of the parties as made before the Labour Court.

18. For the present purpose we look at the statement of claim filed by Mr. Uddal Singh, respondent No.1. Paras 1 and 2 of the said Statement of Claims reads as follows:-

“1. That the petitioner joined the A.I.I.M.S. on 21.01.1987 as a daily wager and worked in the Engineering Service Department of the Institute as a Beldar under the Supervision of Shri Suresh Bhaskar (J.E.) and Shri Chander Mani (A.E.) I worked upto 21.2.1992 when my services were terminated by the verbal order of the J.E. A demand notice has been duly served on the management on 4.3.1992.

2. That the petitioner worked the above said work in the institute without any break in service and put in more than 240 days of actual work in each completed year of his service. The services of the petitioner have been illegally, arbitrarily and without assigning any reason terminated by the officials of the management on the 21st day of February, 1992. No notice or pay in lieu of notice as stipulated under the provisions of the I.D. Act 1947 was given to the petitioner.”

19. The written statement to the above Statement of Claim by the

petitioner reads as follows:

“1. Para 1 of the statement of claims is wrong and denied. It is denied that the workman had joined the services at AIIMS on 21.07.1987 as a daily wager and worked in the Engineering Service Department of the AIIMS as a Carpenter under the supervision of Shri Suresh Bhaskar J.E. and Shri Chander Mani, A.E. It is also denied that the workman worked upto 21.02.1992.

2. Para 2 of the statement of claims is wrong and denied. It is denied that the workman worked in AIIMS without any break in service and it is also denied that the workman has put in 240 days of actual work in each completed year of his service. It is also denied that the services of the workman illegally, arbitrarily and without assigning any reasons were terminated by the officials of the Management on 21-2-92. It is submitted that all the allegations levelled against the Management are weird, was vague and baseless. It has been submitted by the workman that his service was terminated by the officials he has not specified the number of officials as well as their names. Such kind of a frivolous pleas are not tonable in law. It is also submitted that no notice is required to be given to the workman who is a daily wager and working against a non regular post. It has already been submitted by the management that the petitioner is not a workman under the I.D.Act and the Management/AIIMS is not an industry defined under the I.D.Act.”

20. On the issue of pleadings a Division Bench of this Court in the case of ***Grand Vasant Residents Welfare Association vs. DDA & Ors.*** in LPA no. 775/2003 decided on 05.03.2014 in paras 30 and 32 held as follows:-

“31. On November 21, 2011 this Court while deciding RFA (OS) 78/2011 P.K. Gupta vs Ess Aar Universal (P) Ltd. held as under:-

11. We need to highlight that the fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a

defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates uberrima fides when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Placing all relevant facts in a civil litigation cannot be reduced to a game of hide and seek. In the decision reported as 2011 (6) SCALE 677 Rameshwari Devi vs. Nirmala Devi the Supreme Court highlighted that pleadings are the foundation of a claim of the parties and where the civil litigation is largely based on documents, it is the bounden duty and obligation of the Trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties.

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32. In the decision reported as 2012 (6) SCC 430 A. Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:-

"27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands."

21. Clearly the reply filed by the petitioner is utterly vague and bereft of details. A specific averment is made by the workmen about the date of their employment, date of their termination and that they have worked for 240 days in each completed year of service. The written statement of the petitioner simply accepts that they were employed in AIIMS but failed to

give the period of employment. In view of the legal position as stated above, the Labour Court cannot be faulted in making adverse inference against the petitioner.

22. There is also no merit in the contention of the learned counsel for the petitioner that the respondents failed to discharge the onus on them to prove that they have worked for 240 days is on the respondents.

23. A reference may be had to the evidence led by the workmen. For the said purpose I will refer to the evidence by way of affidavit by Mr. Uddal Singh. In his evidence he states as follows:-

“2. That I joined the A.I.I.M.S. as a Beldar on 21.1.1987 on daily wages basis and worked in the Engineering Service Department as a Beldar under the Supervision of Sh. Suresh Bhaskar, as J.E. and Shri Hiroo Chander Mani A.E. I performed my duties in the teaching and P.C. Block under the supervision of the above said officials. I worked with the above said management upto 21.2.1992 on which date my services have been terminated by a verbal order of the above said J.E.

3. That I have worked with the above said institute without any break in service and I have worked for more than 240 days in each completed year of service. My services have been terminated illegally and arbitrarily without assigning me any reason for the same. No notice or pay in lieu of notice as stipulated under the provisions of the I.D. Act was given to me.”

24. The respondents have rightly placed reliance on the judgment of the Supreme Court in the case of ***Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda (supra.)*** The Supreme Court in the said judgment in paras 16 and 17 while quoting an earlier judgment held as follows:-

“16. This court in the case of R.M. Yellatti vs. Asstt. Executive Engineer has observed: (SCC p.116, para 17)

“17. ... 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 up 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”

17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellants has not been consistent. The appellant claims that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.”

25. In the facts of that case the court kept into account the fact that a daily wage earner would not have a letter of appointment and would have no receipt or proof of payment of wages, accepted the deposition of the workman who clearly stated that he had worked for more than 240 days continuously.

26. In view of the pleadings and the evidence placed on record by the respondents workmen, I see no merit in the submission of the petitioner. There are no reasons to interfere in the findings of fact recorded by the

Labour Court. The present writ petition is accordingly dismissed. No orders as to costs.

**JAYANT NATH
(JUDGE)**

**APRIL 21, 2014
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