

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

Judgment Reserved on January 15, 2014

Judgment Delivered on January 20, 2014

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W.P.(C) 1397/2011

MEHTAB

..... Petitioner

Represented by: Mr.Rajiv Aggarwal, Advocate
with Mr.Anuj Aggarwal, Adv.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Represented by: Ms.Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the award dated March 31, 2009 in I.D No.89/2008 (new), I.D No.175/1995 (old), whereby the Labour Court affirmed the termination of the petitioner as legal and denied him the relief.

2. The brief facts as noted from the award are that the petitioner was engaged in the Horticulture Department of the MCD as Maali/Baildar with effect from March 26, 1990. He was paid wages in terms of the notification issued by the erstwhile Delhi Administration under the provisions of the Minimum Wages Act, payable to casual/unskilled workers. It is the petitioner's case that his engagement was terminated on July 26, 1991 without assigning any reasons. It was his case that the respondent engaged fresh persons after his termination; no seniority list was prepared by the MCD; no notice pay was paid before terminating his services; he remained unemployed with effect from the date of

termination. His prayer in the petition was for reinstatement with back wages and consequential benefits.

3. The case of the MCD was that the petitioner was engaged for short period for a specific work and after the work is over, he is disengaged. His services were never terminated. He was being paid wages due to him as per the rules. The petitioner is not entitled to the relief as prayed for.

4. The Labour Court framed two issues, one with respect to his termination, whether the same was illegal and/unjustifiable and to what relief he is entitled to.

5. The Labour Court earlier passed an award on July 07, 2006 against the petitioner. The award was challenged by the petitioner before this Court in W.P.(C) No.2728/2007 which was set aside by this Court and remanded back with a direction to hear the matter in the light of certain judgments referred to by this Court in its order dated July 07, 2006. Pursuant to the remand, the Labour Court was of the view that the petitioner has failed to prove that his services have been terminated illegally and unjustifiably. Based on such a finding, no relief was granted.

6. Learned counsel for the petitioner would contend that the rejection of the claim petition by the Labour Court is illegal and perverse. According to him, the petitioner in his claim petition has set out a case of hostile discrimination as juniors to him have been retained in service whereas he has been thrown out of the job. He would further submit that no seniority list was displayed nor any service compensation was given. His submission was that the termination is violative of Section 25(F), (G) and (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He relied upon the judgment of this Court in W.P.(C)

1684/1991 decided on February 14, 1994, Municipal Corporation of Delhi vs. Sukhvir Singh to contend that if the employment was not for a specific period then the Court shall have to proceed that the denial of employment for whatever reason shall have to be only according to law. He would further rely upon the judgment of the single Bench of this Court in W.P.(C) 6024/1999 decided on August 25, 2011, The Management of Municipal Corporation of Delhi vs. Presiding Officer, Industrial Tribunal and Anr. to contend that if the termination of a worker is not as per the requirements of Section 25(G) of the Act then the relief the workman is entitled to, is of reinstatement and compensation is not the adequate remedy.

7. On the other hand, learned counsel for the respondent would urge that the engagement of the petitioner was for a specific work for a short period and that no junior was retained. It has been specifically stated by her that Mam Chand was senior to the petitioner. According to her, after the completion of work for which the petitioner was engaged he was discharged. Hence, it is not a case of termination. She would rely upon the judgment of the Supreme Court in the case reported as (1997) 76 FLR 85 State of U.P & Ors. vs. Ajay Kumar to support her contention that in relation to a contingent establishment no post exist but can continue so long as a work exist and direction to regularize the services of a workman is not tenable.

8. I have considered the submissions on behalf of the parties. I note that the engagement of the petitioner was for a very brief period between March 29, 1990 to July 26, 1991. The case which has been set up by the petitioner was that the persons who joined later have been retained in service. That apart, it is his case that no notice was given nor any

compensation was given to him. On a perusal of affidavit filed by the petitioner, it is noted that no name of a person junior to him has been given/referred to. I also find that no cross examination of the petitioner was effected by the representative of the respondent MCD on these lines. Be that as it may, I find that even in the cross examination of the management witness, no suggestion was put on behalf of the petitioner that persons junior to him have been retained while his services have been terminated.

9. In view of the fact that no evidence has come about the retention of a junior at the time of petitioner's termination, the judgment relied upon by learned counsel for the petitioner in the case of The Management of Municipal Corporation of Delhi (supra), wherein the learned single Judge of this Court has come to a conclusion that the statutory liability under Section 25(G) of the Act encompassing the principle of '*first come last go*' need to be applied. The said principle would be applicable, if a junior is retained that is not the case here. Further I note that the Labour Court in para No.22 to 24 has held as under:

“22. I have carefully gone through all the documents relied upon by the workman in support of his contentions w.e.f. Ex. WW1/1 to WW1/11. None of these documents establishes the continuance of the workman herein with the management beyond 25.7.91. The workman, in this way, has miserably failed to produce any cogent evidence, either oral or documentary, to establish his employment with the management herein beyond 25.7.91. Accordingly, he has miserably failed to establish employer and employee relationship between the parties herein beyond 25.7.91 as per mandate of judgment of Hon'ble Supreme Court of India given in Workmen of Neelgiri Co-operative Marketing Society Ltd. Case (Supra).

23. *For the sake of arguments, one of the contentions of the workman might be that if he did not come to the work place after 25.7.91 as per the averments of the management, the management ought to have issued him a recalling letter or ought to have proceeded against him for remaining absent by way of departmental enquiry or by way of any other manner calling upon him to resume his duties. On this point, I am of the considered opinion that even such plea on the part of the workman in such like cases is not maintainable. In coming to this conclusion, I find support from the judgment of Hon'ble Delhi High Court given in Diamond Toys Co. (P) Ltd. Vs. Toofani Ram & Another decided on 07.02.2007 in W.P.(C) No.4501/04. Paras 6 to 8 of this judgment are relevant which are to the following effect:-*

6. It is commonly known that a person, who is working in the industry keeps on trying for better jobs and better opportunities. The moment he gets better job, he is free to leave his previous employer. The industrial law does not require him to pay any compensation to the employer while leaving his job, as the industrial laws require an employer to pay retrenchment compensation when employer wants to terminate the workman. Thus, there are no fetters on the workman on leaving the job while there are fetters on the employer in terminating the service of an employee. If a workman leaves his job all of a sudden and stops attending the workplace of the employer, Industrial Dispute Act does not put any obligation on the employer to call back the workman and request him to come and join his duties. Such a request can be made by the employer only when employer considers that a useful workman should not leave the job or where a workman is governed by certain rules and regulations under State employment and the employer is supposed to hold an enquiry

under the service rule before termination of service of an employee. Where the workman is free to leave and join another employer without even a notice and without obtaining a no objection from his employer, the employer cannot be compelled to call such a workman for joining the duties or to conduct an enquiry into the absence of the workman and then terminate his services. Leaving the services of an employer by the workman is a valid mode of his abandonment and there is no illegality attached to a workman leaving the services of his previous employer and joining another employer. If the employer does not consider the abandonment of service or leaving the service by a workman as a misconduct, the law cannot force the employer to consider such abandonment as a misconduct and hold an enquiry. Misconduct of an employee is the one which an employer considers as the misconduct. An enquiry is required to be held only where an employer intends to impose punishment on the employee for an alleged misconduct. if an employer does not intend to impose any punishment on the employee and considers that if the employee has left his service, let it be so, the law cannot compel the employer to hold an enquiry and punish an employee for the misconduct.

7. I consider that it was not necessary for the employer to hold an enquiry into the abandonment of the service by the respondent. It was for the respondent to prove that his services were terminated for some reasons by the employer or without any reason by the employer. The respondent had taken a stand which was found to be false. Under these circumstances, the Labour Court's conclusion that it was a case of retrenchment is perverse.

8. A question would arise as to why a workman would raise industrial dispute if he had voluntarily left the service and still make a claim against the employer. For this one has to have peep into union activities. Several pocket unions have been floated by some self proclaimed union leaders, who run these unions on contract basis. These unions catch hold of such employees and enter into a contract with them of giving them a percentage of the money received from employer. These unions exploit the lacunae in labour laws to fullest possible extent for their own benefit. It is for this reason that in all such statement of claims always one reason of termination is given: 'workman made demand for legal facilities and he was terminated'. This Court has come across cases where written contracts are entered by union for receiving percentage of amount received by workman, even if the amount is under Section 17-B of Industrial Disputes Act for maintenance of workman.

24. One of the observations of the Hon'ble Supreme Court in *Uma Devi's case* (Supra) was that casual/temporary workman joins the duties with the management knowing fully well the nature of such duties and consequences of employment with the management and more particularly with the management which happens to be a Government department as the management herein."

10. Insofar as the reliance placed by the petitioner on judgment of this Court in *Sukhvir Singh's case* (supra) is concerned, it supports the case of the respondent inasmuch as the respondent has also put up a case that his engagement was for a short period. Meaningfully read, the work for which the petitioner was engaged was well defined and his engagement would come to an end after the work is over. The principle enunciated by

this Court in Sukhvir Singh's case (supra) would be applicable only in those cases where the employment of a worker is not for a specific period.

11. In view of the above, I do not find any merit in the writ petition and the same is accordingly dismissed without any order as to costs.

(V.KAMESWAR RAO)
JUDGE

JANUARY 20, 2014
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