

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

Judgment Reserved on January 15, 2014
Judgment Delivered on January 24, 2014

+ **W.P.(C) 5920/2010**

DHAN SINGH

..... Petitioner

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

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 writ petition has been filed by the petitioner Dhan Singh challenging the validity of the Award dated August 06, 2008 passed by the Industrial Tribunal in I.D No.09/2007, whereby the Tribunal has rejected the claim of the petitioner and denied him the relief.

2. The case pleaded by the petitioner in his statement of claim was that he worked with the respondent since July 1999 as a Beldar. He was treated as a daily rated/casual muster roll worker and was paid minimum wages as fixed and revised from time to time under the Minimum Wages Act. He also pleaded that his counterparts doing identical work were treated as regular employees and were paid wages in terms of pay scales. It was his case that they were enjoying the benefits like uniform, earned leave, casual leave etc. It was also his case that his services were terminated with effect from July 01, 2002 without assigning any reason, despite complying 240 days of continuous employment prior to his termination by retaining persons junior to him, which is in violation of

Section 25(F), (G) and (H) of the Industrial Disputes Act (hereinafter referred to as the Act). He would state that a demand notice sent to the management for his reinstatement was not replied to. His ultimate relief was for reinstatement with continuity of service and full back wages.

3. The respondent corporation contested the claim on the ground of delay inasmuch as the alleged termination is in the year 2002, whereas the claim was filed in the year 2007 after a lapse of 5 years. The respondent disputed the fact of completion of 240 days by the petitioner in the year preceding his alleged date of termination. According to the respondent corporation, it engages daily rated workers for seasonal work for a short period for desilting of Nala. They have pleaded that the nature of work for which the petitioner was engaged was seasonal. According to the respondent, it is the petitioner himself who did not report for duty. The respondent denied the fact of his regular and permanent nature of work.

4. Five issues were framed by the Industrial Tribunal, which included: whether the petitioner has completed 240 days of continuous service as per Section 25(B) of the Act; whether the petitioner had abandoned the employment of his own; whether the claim is time barred.

5. Insofar as the issue of completing 240 days, the Tribunal had decided the same against the petitioner. In other words the petitioner could not able to prove that he had worked for 240 days in the year preceding his termination. In fact the Tribunal relied upon the admission on the part of the petitioner himself that he did not work for 240 days. Insofar as the issue about the abandonment of the employment and the claim being time barred, the Tribunal also decided the issue of abandonment against the petitioner by relying upon the cross

examination of the petitioner, wherein he has stated that he worked for few days in each year, whereby the Tribunal held by such a statement the case of respondent that it used to give work to a worker asking for the same during the season is proved. Further the claim being stale was also decided against the petitioner.

6. Learned counsel for the petitioner reiterated the stand taken by the petitioner in his claim petition. He has taken me in detail through the averments made in the claim petition and laid stress on the affidavit filed by the petitioner, wherein the petitioner had stated that he has completed 240 days prior to his illegal termination. He had also mentioned the names of various employees, who were not terminated by the respondent corporation. Meaningfully read, it was his case of discrimination, as the respondent by terminating the petitioner's services have singled him out. He would also draw my attention that no cross examination was effected by the management representative on the issue of juniors to him having been retained while he was terminated. He would state that the petitioner has been visiting the respondent corporation to request them to take him on job. According to him, he was being given assurance that he would be taken on job. This submission of learned counsel for the petitioner is primarily related to the issue of delay in filing the claim petition. According to him, as far as the stand of the respondent that the petitioner did not report for duties is concerned, he would state that it is the obligation of the respondent corporation to call the petitioner in the event of work being available. 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 in support of his contention that they were required to send a call letter asking him to join the services.

No such communication was sent. He would challenge the award of the Tribunal being perverse as the issue of juniors being retained in service was not dealt with by the Tribunal and the petitioner was entitled to the relief as prayed for. In the alternative, he would plead that if there was a delay in filing the claim petition, surely the relief can be moulded by restricting the back wages. He has also relied upon the judgments reported as (1999) 6 SCC 82 Ajaib Singh vs. The Sirhind Co-operative Marketing Cum-Processing Service Society Limited & Anr., (1994) III LLJ 689 Bom Gaurishankar Vishwakarma vs. Eagle Spring Industries Pvt. Ltd. & Ors., W.P.(C) 6024/1999 decided on August 25, 2011 in The Management of Municipal Corporation of Delhi vs. Presiding Officer, Industrial Tribunal & Anr., and 82 (1999) DLT 747 Management Horticulture Department of Delhi Administration vs. Trilok Chand.

7. On the other hand, Ms.Saroj Bidawat, learned counsel for the respondent corporation would submit that the petitioner himself has admitted that he has not worked for 240 days in the year preceding his alleged termination, he is not entitled to any relief. Insofar as the contention that persons junior to the petitioners have been retained, she states that no names of the so called juniors have been mentioned by the petitioner in any of his pleadings. According to her, Section 25(G) of the Act is not attracted. She would further submit that the petitioner did not disclose the period of work with the respondent corporation. He also did not disclose the names of the other zones where he has alleged to have worked since 1999. The respondent corporation admit the fact that the petitioner worked for 15 days in the month of July, 1999 against muster roll No.17809, in the month of August 1999 for 26 days against muster roll No.17831 and in the month of September 1999 for 26 days against

muster roll No.17868 against the specific sanction of 89 days for specific seasonal work in the Civil Lines zone. She also submit that even in March, 2002, the petitioner had worked for 13 days vide muster roll No.756, April, 2002 for 26 days and May, 2002 for 12 days. According to her, the petitioner having not worked for 240 days, the whole claim was rightly rejected by the Tribunal. She has relied upon the judgment reported as AIR 1997 SC 3657, Himanshu Kumar Vidyarthi vs. State of Bihar.

8. It is also her case that the claimant after June 01, 2002 did not approach the authorities for any work. According to her, the stand of the petitioner that he approached the authorities must be pleaded specifically with regard to the dates and the officer he met. In the absence of any such pleadings, it cannot be held that despite he approaching the authorities he was not offered the job.

9. I have considered the rival submissions on behalf of the parties.

10. In the absence of the petitioner having worked for 240 days, the case for violation of Section 25(F) of the Act is not maintained. I note that there are no specific pleadings with regard to persons junior to him have been retained, whereas he has been singled out with the termination. He gives the name of few persons like Pradeep Kumar, Rakesh Kumar, Vinod Kumar, Shyam Lal, Sanjeev, Sohan Veer etc. whom he describe as co-employees and were working when he was terminated. He has not said how are they junior to him nor he has pleaded as to when they were initially engaged. It is true that no suggestion was given with regard to this aspect during the cross examination of the workman, a perusal of the cross examination of the petitioner would also show that he has not named any person junior to

him who was retained in the employment. Hence it is not a case of violation of 25(G) of the Act. The reliance placed by the learned counsel for the petitioner on the judgment of this Court in the case reported as 82 (1999) DLT 747 Management Horticulture Department of Delhi Administration vs. Trilok Chand is not applicable in the facts of this case inasmuch as the workman in the said case had worked for 240 days. The termination therein was in violation of 25(F) of the Act. This Court was of the view that in the facts, the termination was rightly set aside. Further, in the case of Ajaib Singh's case (supra), it is noted that the Supreme Court had held that worker who had not initiated action till completion of 7 years would not be hit by the provisions of Limitation Act, 1963 inasmuch as the limitation Act does not apply to industrial disputes. In this case, the contention of the learned counsel for the petitioner that the Supreme Court in Ajaib Singh's case having held that in the case of delay and laches the Court would be within its right to mould the relief. Since I am of the view that the petitioner is not entitled to any relief for the reason that the petitioner had not worked for 240 days nor he has shown the violation of Section 25(G) of the Act, the judgment would not be applicable in the facts of this case.

11. Insofar as the judgment relied upon by the learned counsel for the petitioner in Sukhvir Singh's case (supra) is concerned, it has come on record that the respondent corporation engages daily rated workers for seasonal work for desilting of nala and it is noted that the months during which the petitioner was engaged preceded and followed the monsoon season. The judgment in Sukhvir Singh's case (supra) makes an exception that if the employment is not for a specific period then in that eventuality the denial of the employment to a workman has to be in

accordance with the law. In this case the employment is for specific period for desilting of nala, the judgment in Sukhvir Singh's case would not be applicable.

12. Reliance placed by the petitioner on the judgment of this Court in The Management, Municipal Corporation of Delhi's case (supra) is also not applicable as the Court in that case was primarily dealing with the Section 25(G) of the Act. In this case the petitioner could not able to prove that the juniors have been retained, Section 25(G) of the Act has no application. Even the reliance placed by the learned counsel for the petitioner in Gaurishankar Vishwakarma's case (supra), the same also would have no application in this case in view of the fact that the work for which the petitioner was engaged, was for desilting of Nala which being seasonal and for specific period and not regular, the ratio laid down in this case is primarily with regard to the persons working against a regular nature of work as it is seen from the facts that the appellant in the said case was working as a Miller for about six to seven years prior to refusal of work to him by the respondent.

13. Rather, I find the judgment relied upon by the learned counsel for the respondent in Himanshu Kumar Vidyarthi's case (supra) is applicable in the facts of this case inasmuch as daily wage employee appointed on the basis of need of work, if terminated, the same cannot be construed as retrenchment. The relevant observation of the Supreme Court in this regard is reproduced as under:

“They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for

the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary.”

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

(V.KAMESWAR RAO)
JUDGE

JANUARY 24, 2014/km