

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

+ Judgment delivered on: December 7, 2015

% W.P.(C) No. 3205/2004

MUNICIPAL CORPORATION OF DELHI Petitioner

**Through: Ms. Mini Pushkarna, Standing Counsel
with Ms. Yoothica Pallavi, Advocate.**

versus

SHRI RAM MILAN Respondent

**Through: Mr. Rajiv Aggarwal and Mr. Sachin
Kumar, Advocates.**

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Municipal Corporation of Delhi (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India assailing the validity of the impugned Award dated 10.10.2002 passed by the Presiding Officer, Labour Court No. VI, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 882/98.

2. The brief facts as stated by the respondent-workman in his statement of claim are that the workman, i.e., Shri Ram Milan joined the employment of the petitioner-management, i.e., Municipal Corporation of Delhi as a *Chowkidar* w.e.f. 11.09.1987. The respondent-workman was a monthly paid/muster roll worker and was being paid wages as fixed and revised from time to time under the Minimum Wages Act by the appropriate Government for unskilled workers. The respondent-workman was neither given any appointment letter nor any leave record was being maintained. The services of the respondent-workman were terminated w.e.f. 11.08.1997 without assigning any reason. It is alleged that the respondent-workman was not being paid his earned wages for the period of 03.01.1997 to 10.08.1997. The action taken by the petitioner-management is violative of Sections 25-F and G of the Industrial Disputes Act, 1947 read with Rules 76, 77, and 78 of the Industrial Disputes (Central) Rules, 1957 and also violative of Articles 14, 16 and 39(d) of the Constitution of India.

3. The respondent-workman raised an industrial dispute and the same was referred by the Secretary (Labour), Government of NCT of Delhi, vide reference Order No. F-24(3916)/98-Lab/31467-71 dated 07.09.1998 to the learned Industrial Adjudicator for adjudication on the following terms of reference:

“Whether the services of Sh. Ram Milan 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 respect?”

The respondent-workman filed his statement of claim dated 15.12.1998 before the learned Industrial Adjudicator. Thereafter, the Secretary (Labour) vide Order No. F. 24(3916)/98-Lab./26833-37 dated 20.07.2000 issued a corrigendum thereby adding the following two terms of reference:

“2. Whether Sh. Ram Milan, Chowkidar is entitled to wages as admissible to his regular counter-part for his muster-roll employment period, i.e. from 11.9.97 to 10.8.97 and if so, what direction are necessary in this respect?”

“3. Whether Sh. Ram Milan, Chowkidar is entitled to earned wages for the period from 3.1.97 to 10.8.97 and if so, what directions are necessary in this respect?”

Thereafter, the respondent-workman filed an amended statement of claim dated 14.08.2000 and the petitioner-management filed its written statement and raised the objection that the respondent-workman is not entitled to the relief claimed in the petition as he was engaged as daily wages *chowkidar* against the leave vacancy. The respondent-workman's last application for engagement to the post of *chowkidar* was in M.C. Pry. School, Mangol Puri M-1 w.e.f 22.07.1997 to 24.07.1997. However, one Shri Raj Singh, daily wages *chowkidar* was also engaged against the leave vacancy w.e.f. 23.12.1993 and as per the petitioner-mangement the

claim of the respondent-workman is false. After framing of the issues on 11.10.2001, both the parties led their respective evidence on their behalf and thereafter, the learned Industrial Adjudicator passed the impugned Award dated 10.10.2002.

Aggrieved by the aforesaid Award dated 10.10.2002, the petitioner, i.e., Municipal Corporation of Delhi, has preferred the present Writ Petition.

4. The learned counsel causing appearance on behalf of the petitioner-management, i.e., Municipal Corporation of Delhi, has pointed out that in the instant case the respondent-workman was never employed by the petitioner-management as a regular employee. However, he was given employment with the petitioner-management for a specific period whenever the regular *chowkidar* used to be on leave. Consequently, his employment comes to an end on the last day of the engagement for a specific period. Therefore, there was no occasion for the petitioner-management to issue the termination order or conducting any disciplinary enquiry against the respondent-workman.

The learned counsel for the petitioner-management further submitted that the learned Labour Court completely ignored the evidence on the record. The respondent-workman did not complete 240 days of his employment with the petitioner-management. The respondent-workman

was only a daily wager, engaged for a short period against leave vacancy and the respondent-workman had not worked for 240 days in any year and relied upon the judgment of the Hon'ble Supreme Court in the case of ***Madhyamik Shiksha Parishad vs. Anil Kumar Mishra, AIR 1994 SC 1638***. Therefore, in such a situation, there is no question of withholding any document and non-production of relevant documents hence, the impugned Award is totally erroneous.

The learned counsel for the petitioner-management further emphasises that in the instant case the respondent-workman has got no right to be regularised nor the principal of 'equal pay for equal work' arises as he is not a regular employee of the petitioner-management. The learned counsel for the petitioner-management further relied upon the following judgments:

- ***Harminder Kaur vs. Union of India, JT 2009 (13) SC 550***
- ***Surinder Prasad Tiwari vs. UP Rajya Krishi Utpadan Mandi Parishad, (2006) 7 SCC 684***
- ***Secretary, State of Karnataka vs. Uma Devi and Others, (2006) 4 SCC 1***
- ***Steel Authority of India vs. State of West Bengal, (2008) 14 SCC 589***
- ***State of Haryana and Others vs. Charanjit Singh and Others, (2006) 9 SCC 321***

- ***Jagbir Singh vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327***
- ***Ghaziabad Development Authority vs. Ashok Kumar, (2008) 4 SCC 261***
- ***Municipal Corporation vs Ram Pal, 2007 (115) FLR 284***
- ***Haryana Urban Authority vs. Om Pal, (2007) 5 SCC 742***
- ***Bharat Sanchar Nigam Limited vs. Maan Singh, (2012) 1 SCC 558***
- ***State of Rajasthan vs. Sarjeet Singh, (2006) 8 SCC 508***
- ***Delhi State Industrial Development Corporation vs. J. K. Thakur, 91 (2001) DLT 738 (DB)***

5. On the other hand, the learned counsel for the respondent-workman has argued that the present Writ Petition is not maintainable in law as the petitioner-management has not raised any substantial question of law to be determined. The learned counsel further argued that the petitioner-management is not entitled to invoke the writ-jurisdiction under Article 226 of the Constitution to challenge the finding of fact given by the learned Industrial Adjudicator and this Hon'ble Court while sitting in writ-jurisdiction cannot re-appreciate the evidence adduced before the learned Industrial Adjudicator and relied upon the following judgments:

- (a) ***Sadhu Ram vs. Delhi Transport Corporation, AIR 1984 SC 1967.***
- (b) ***Harbans Lal vs. Jag Mohan, (1985) 4 SCC 333.***

- (c) *Calcutta Port Shramik Union vs. Calcutta River Transport Association & Ors., 1988 (Sup.) SCC 768.*
- (d) *Sudhoo vs. M/s. Haji Lal Mohd. Biri Works & Ors., 1990 Lab. I.C. 1538.*

The learned counsel for the respondent-workman has further argued that the respondent-workman has successfully proved its case before the learned Industrial Adjudicator that he had successfully completed 240 days of continuous service. Moreover, the petitioner-management has failed to adduce any evidence in support of their claim that the respondent-workman was engaged as *chowkidar* against leave vacancy w.e.f. 11.10.1993 as claimed.

6. Instant is a case where the respondent-workman is claiming the right accrued in his favour under Section 2(s) of the Industrial Disputes Act, 1947, challenging the action of the petitioner-management being violative of Section 25 F and G of the Industrial Disputes Act, 1947. Whereas the petitioner-management disowning the right accrued in favour of the respondent-workman, came out heavily on the respondent-workman to be a casual worker and denied his engagement with the petitioner-management by challenging the impugned Award dated 10.10.2002 of reinstatement of the respondent-workman to be erroneous.

7. The claim pleaded by the respondent-workman is that he was engaged with the petitioner-management as a daily wager *chowkidar*

since 11.09.1987 and the petitioner-management without following the due procedure terminated his services on 11.08.1997. Further, the claim of the respondent-workman is that the petitioner-management is engaged in unfair labour practices and despite his completing 240 days of continuous service with the management, the petitioner-management did not regularise the respondent-workman as a regular *chowkidar*, which is nothing but an arbitrariness on the part of the petitioner-management to promote further unfair labour practices in the petitioner-management's organisation/institution. The claim of the respondent-workman further rests on the plea that the petitioner-management has been taking the services of the respondent-workman as a regular *chowkidar*. However, he is being paid wages on the basis of the Minimum Wages Act, 1948.

8. Once the respondent-workman has acquired the status of 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and completes 240 days of continuous service, his termination from the service/employment could be valid only after the due procedure as laid down in Section 25-F of the aforesaid Act is followed. Section 25-F of the Industrial Disputes Act, 1947 is reproduced hereinunder:

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

9. The petitioner-management coming out with a shaky defence denied the claim of the respondent-workman and came out with the defence stating therein that the respondent-workman was engaged with the petitioner-management, but he was engaged for a specific work against the leave vacancy for a particular period. Consequently, the respondent-workman doesn't have right to be regularised and even the claim of parity *qua* against the regular employees is false.

10. The plea of the petitioner-management that the long service of the respondent-workman *ipso facto* cannot be the sole ground for regularisation and relied on the following judgments rendered by the Hon'ble Supreme Court, i.e., ***Madhyamik Shiksha Parishad vs. Anil Kumar Mishra***(*Supra*) and ***Harinder Kaur vs. Union of India*** (*Supra*) loses ground as the petitioner-management is under the legal obligation to follow the mandatory provisions of Section 25F and G of the Industrial

Disputes Act, 1947 and non-compliance of the mandatory provisions of the aforesaid Act by the petitioner-management automatically brings the status of the respondent-workman to be that of a 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. Reliance is placed on the judgment rendered by the Apex Court in the case of *Asst. Engineer, Rajasthan Dev. Corporation and Anr. vs. Gitam Singh*, (2013) 2 SCC (LS) 369, wherein the Apex Court has made the following observations:

"10. In L. Robert D'Souza (1982) 1 SCC 645, this Court in paragraph 27 (pg. 664) held as under:

27. ... Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid.

11. What has been held by this Court in L. Robert D'Souza, (1982) 1 SCC 645 is that Section 25-F of the Industrial Disputes Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition." (Emphasis Supplied)

11. Further, the judgments relied upon by the petitioner-management, i.e., *Jagbir Singh vs. Haryana State Agriculture Marketing Board (Supra)*, *Ghaziabad Development Authority vs. Ashok Kumar (Supra)*,

Municipal Corporation Vs Ram Pal (Supra), Haryana Urban Authority vs. Om Pal (Supra), Bharat Sanchar Nigam Limited vs. Maan Singh (Supra) and *State of Rajasthan vs. Sarjeet Singh (Supra)* loses its significance in presence of the work rendered by the respondent-workman, which is perennial in nature and therefore, respondent-workman holds the status of a ‘workman’ under Section 2(s) of the Industrial Disputes Act, 1947.

12. Further, the plea of the petitioner-management that an employee, i.e., daily wager/adhoc/temporary/contractual employee has got no right of regularisation unless the due procedure under Articles 14, 16 and 39(d) of the Constitution of India is followed by placing reliance on the following judgments rendered by the Hon’ble Supreme Court in the cases of *Surinder Prasad Tiwari vs. UP Rajya Krishi Utpadan Mandi Parishad (Supra)*, *Secretary, State of Karnataka vs. Uma Devi and Others (Supra)* and *Delhi State Industrial Development Corporation vs. J. K. Thakur (Supra)* loses its significance in presence of restoring the position of an employee to the position which he held before dismissal or removal or termination of service to maintain the dignity of the workman. Reliance is placed on the judgment rendered by the Apex Court in the case of *Jasmer Singh vs. State of Haryana, (2015) 4 SCC 458*, wherein the following observations were made:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be

put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

13. The engagement of the respondent-workman with the petitioner-management as a daily wager *chowkidar* is not specifically denied. However, the petitioner-management came up with the plea that the respondent-workman was engaged for a specific period against the leave vacancy. The said admission in paragraph 1 of the written statement filed by the petitioner-management is reproduced as under:

“1. ... Sh. Ram Milan was engaged as a chowkidar against the leave vacancy with effect from 11.10.1993 in the different school. It is humbly submitted that when ever any permanent chowkidar of any school proceeded on leave Sh. Ram Milan was engaged leave vacancy for a small period many time whenever any regular chowkidar had to proceed on leave...”

The petitioner-management further admitted in paragraph 2 of their written statement that his last engagement with the management was on 24.07.1997 which is further reproduced as under:

“2. ... It is further submitted that as per the record Sh. Ram Milan submitted his last application for the engagement for the chokidar in M.C. Pry. Schoool Mangol Puri M-1, against leave vacancy and Sh. Ram Milan was allowed to work with effect from 22-07-97 to 24-07-7...”

The petitioner-management in paragraph 3 of their written statement further had not denied that similarly placed person, i.e., Shri. Raj Singh was also a daily wages *chowkidar* like respondent-workman, i.e., Sh. Ram Milan who was engaged as daily wager *chowkidar* against the leave vacancy w.e.f. 23.12.1993.

14. The written statement so filed by the petitioner-management indicates that the petitioner-management was engaging persons/workmen from outside the institution giving rise to unfair labour practices in the institution since the year 1993.

15. In the instant case, the respondent-workman claimed that he is in the employment of the petitioner-management since 11.09.1987 as a *chowkidar* and he was being treated as a monthly paid muster-roll worker and was paid wages under the Minimum Wages Act which was revised from time to time. The documents placed by the respondent-workman, i.e., EX WW 1/1 and EX WW 1/6 to EX WW 1/48, in support of his claim, which were exhibited before learned Industrial Adjudicator, supports the contention of the respondent-workman that he has worked with the petitioner-management as *chowkidar* for a period of 241 days in a calendar year, i.e., prior to his date of his termination on 11.08.1997.
16. The petitioner-management, on the contrary, did not file any documentary evidence to show that the respondent-workman was engaged for a specific period against the leave vacancy. The admission on behalf of the petitioner-management that they had engaged the respondent-workman since the year 1993 till the year 1997 doesn't give any justifiable or understandable reason for respondent-workman like employee/person in the institution which gives rise to unfair labour practise.
17. The petitioner-management ought to have either regularized the respondent-workman or have followed the due procedure instead of indulging in such type of unfair labour practices. Once the respondent-workman establishes that he has been in the continuous service with the

petitioner-management for 240 days, he acquires the status of ‘workman’ under Section 2(s) of the Industrial Disputes Act, 1947.

18. In the instant case, there is no plea on behalf of the petitioner-management for the termination of the services of the respondent-workman or whether the mandatory provisions of Section 25F and G of the Industrial Disputes Act, 1947 were complied validly. The plea of the petitioner-management that the respondent-workman was engaged for a specific period against the leave vacancy and that he was on adhoc basis is not acceptable and is not correct as the nature of the work is perennial in nature.

19. The facts on record suggest that the respondent-workman was engaged as a daily wager *chowkidar* in the relevant period and the work taken from the respondent-workman was that of a regular *chowkidar*. In light of the admissions in the written statement by the petitioner-management itself that the respondent-workman was engaged since the year 1993 till 1997 and the nature of the work rendered for such a long period indicates that the same to be perennial in nature consequently, entitles the respondent-workman for ‘equal pay for equal work’. Reliance is placed on the judgment rendered by the Apex Court in the case of *Umrala Gram Panchayat vs. The Secretary, Municipal Employees Union and Ors.*, 2015(145) FLR 688 wherein the following observations were made:

“10. On a perusal of the same, we have come to the conclusion that the High Court has rightly dismissed the case of the Appellant as the Labour Court has dealt with the same in detail in its reasoning portion of the Award in support of its findings of fact while answering the points of dispute and the same cannot be said to be either erroneous or error in law. In support of the above said conclusions arrived at by us, we record our reasons hereunder:

It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the Appellant - Panchayat. They have also been working for similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined Under Section 2(ra) of the ID Act r/w Entry No. 10 of the Fifth Schedule to the ID Act, which is prohibited Under Section 25(T) of the ID Act. Further, there is no documentary evidence produced on record before the Labour Court which shows that the present workmen are working less or for lesser number of hours than the permanent employees of the Appellant - Panchayat. Thus, on the face of it, the work being done by the concerned workmen has been permanent in nature and the Labour Court as well as the High Court have come to the right conclusion on the points of dispute and have rightly rejected the contention of the Appellant - Panchayat as the same amounts to unfair labour practice by the Appellant -Panchayat which is prohibited Under Section 25(T) of the ID Act and it also amounts to statutory offence on the part of the Appellant Under Section 25(U) of the ID Act for which it is liable to be prosecuted.

17. In view of the reasons stated supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the Appellant -Panchayat is erroneous and also

amounts to error in law. Hence, the same cannot be allowed to sustain in law.”

20. As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no merit in the present Writ Petition and there is no illegality or perversity in the impugned Award dated 10.10.2002. Consequently, the same is dismissed.

The Lower Court record be sent back along with one copy of this Judgment. No orders as to costs.

I.S.MEHTA, J

DECEMBER 7, 2015

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