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

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Reserved on: 28.03.2023
Pronounced on: 06.07.2023

+ **W.P.(C) 14288/2004**

CENTRAL WAREHOUSING CORPN. Petitioner

Through: Mr. K. K. Tyagi, Mr. Iftexhar
 Ahmad and Ms. Garima
 Tyagi, Advocates.

versus

EKPAL SINGH Respondent

Through: Mr. Vivek Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Writ Petition has been preferred by the Petitioner under Article 226 and 227 of Constitution of India assailing the Award dated 26.05.2004 ('Impugned Award') passed by the learned Presiding Officer, Central Government Industrial Tribunal cum Labour Court-II, New Delhi ('Labour Court') in I.D. No. 100/1998, titled as '*Ekpal Singh v. Management of Central Warehousing Corporations*'.



2. Vide the Impugned Award, the learned Labour Court decided the dispute, referred to it by the Central Government, in favour of the Respondent Workman and against the Petitioner Corporation. Learned Labour Court observed that the action of the Management of the Petitioner in terminating the service of the Respondent was not justified and thus, it directed the Petitioner to reinstate the Respondent from 20.08.1996 with 10% back wages.
3. During the pendency of the present Writ Petition, the unfortunate demise of Respondent took place on 07.12.2014. Legal heir of the Respondent was substituted in place of deceased Respondent vide order of this Court dated 09.07.2015.

**BRIEF FACTS RELEVANT FOR ADJUDICATION OF
PRESENT WRIT PETITION**

4. It is the case of the Respondent that the Petitioner approached certain residents of Workman's Village, namely, Vanthala in 1986 for acquiring their land. It is Respondent's case that the Petitioner offered a very low price for the land so, the villagers negotiated with the Petitioner Corporation for providing employment to atleast one member of their families. The Petitioner agreed to this condition and subsequently, respective agreements were entered into between the villagers and the Petitioner. It is the claim of the Respondent that one such agreement dated 10.04.1986 was entered into between the father of Respondent, namely, Sh. Ajab Singh and the Petitioner.



5. It is the further case of the Respondent that pursuant to the agreement, the father of the Respondent wrote a letter dated 19.06.1987 to the Petitioner Corporation requesting them to provide employment to his son, i.e, the Respondent Workman, as agreed between him and the Petitioner Corporation. It is the claim of Respondent that after several repeated requests for employment, the Petitioner finally gave employment to the Respondent as daily wage chowkidar vide its Office Memorandum dated 20.06.1987.
6. It is further the claim of the Respondent that he made several requests to the Petitioner for regularizing his service, however, the Petitioner did not accede to his requests. Consequently, the Respondent raised an industrial dispute in this regard. The term of reference in that dispute was as follows:

“Whether the action of the Management of Central Warehousing Corporation in not regularizing the service of Shri Ekpai Singh s/o Shri Ajab Singh, Daily Rated Watchman on and with effect from 20-6-89 on completion of two years' service in accordance with the terms of appointment order, is legal and justified? If not, to what relief the workman is entitled to?”

7. Pursuant to raising of the above-mentioned dispute, the Petitioner appointed Respondent on regular post of chowkidar vide Memorandum dated 08.09.1995. It is the case of the Respondent that he is illiterate (now deceased) and he had made this clear to the Petitioner in the very beginning. He got his joining report filled from other persons since he did not know how to write. It is the claim of the Respondent that he was



terminated from service on the ground that his Class VIII transfer certificate was found to be false on verification of his documents, however, his case is that he had not filled the form and he should have been given an opportunity of being heard by the Petitioner before terminating him. Thus, he raised an industrial dispute. The Central Government referred the industrial dispute to the Industrial Tribunal vide its order dated 06.04.1998 for adjudication with the following term of reference:

“Whether the action of the management of Central Warehousing Corporation in terminating the service of Shri Ekpall Singh, Chowkidar vide office order No. K-Bhopal/Chowkidar/Regular/96-97/5845 dated 20-8-1996 is justified? If not, to what relief the workman is entitled?”

8. The Petitioner, in order to contest the industrial dispute, filed its Written Statement. It is the claim of the Petitioner that Respondent was initially appointed as daily wage chowkidar in Lucknow region vide its letter dated 20.06.1987 as there was no vacancy for regular chowkidar in that region. It is Petitioner's case that the Respondent was offered regular employment vide Memorandum dated 08.09.1995 when there was vacancy. Thereafter, he was asked to submit necessary attestation forms which were required for verification of his documents. It is the Petitioner's case that in the attestation forms, Respondent stated himself to be class VIII pass and also submitted a school transfer certificate in this regard. However, on verification it was found



that documents submitted by Respondent with respect to his education were false. It is the case of Petitioner that Respondent's appointment had to be made in accordance with CWC (staff) Regulations, 1986 and as per these Regulations, eligibility criteria for the post of chowkidar was middle school standard pass, experience of working as chowkidar for 2 years and 25 years of age. It is the case of the Petitioner that since Respondent was not found class VIII pass, so he was not eligible for the post of chowkidar and consequently, he was terminated from service vide Order dated 20.08.1996 under Clause 3 of attestation form read with Clause 10(iii) of CWC (staff) Regulations, 1986.

9. After considering the pleadings of both the parties, no additional issue was framed by the learned Labour Court and only term of reference was decided. Both the parties led their respective evidences.
10. After hearing both the parties, the learned Labour Court decided the term of reference in favour of the Respondent and against the Petitioner. It was observed by learned Labour Court that since there are other chowkidars, who being illiterate, also got regular post of chowkidar, so Respondent should also be considered for the post of regular chowkidar. Consequently, learned Labour Court directed the Petitioner to reinstate Respondent from 20.08.1986 with 10% back wages.
11. The relevant findings of the learned Labour Court are extracted hereinbelow:



“It was argued from the side of the management that the workman has filed false certificate so his services have been terminated. According to the terms and conditions of the PW-1, no certificate regarding education is required as no qualification has been mentioned in it. So class VIII pass certificate has no significance by whomsoever it has been obtained. For lack of education qualification, he may not be given the status of regular chowkidar, but in the case the illiterate persons are regular chowkidars, his case should also be considered. So far as back wages are concerned, there is production of false documents, it is not certain under what circumstance, it has been filed. As the claimant workman is illiterate so he should be reinstated atleast at the post of casual chowkidar. He will get only 10% wages in the facts and circumstances of this case.”

12. Being aggrieved by the Impugned Award, the Petitioner has preferred the present Writ Petition, *inter alia*, praying for quashing of Impugned Award dated 26.05.2004.

**SUBMISSIONS MADE ON BEHALF OF PETITIONER/
CORPORATION**

13. Mr. K. K. Tyagi, learned counsel appearing for the Petitioner argued that the learned Labour Court committed grave error of fact when it was observed that it was not certain as to under what circumstances class VIII transfer certificate was filed by the Respondent before the Petitioner Corporation, despite there being specific admission by Respondent himself in his statement of claim that he had filed the class VIII transfer certificate along with attestation forms.



14. It was further averred by the learned counsel that the class VIII transfer certificate filed by the Respondent was found forged and fabricated on verification by the Petitioner Corporation. In the absence of class VIII transfer certificate or any other proof of Respondent's education, indicates that the Respondent had not even studied till class VIII, which is an essential requirement for the post of chowkidar as per CWC (staff) Regulations, 1986. Even though employment was offered to Respondent in order to honour the Agreement dated 10.04.1986 entered into between father of Respondent and Petitioner, but said employment was subject to the Recruitment Rules and Regulations only. Thus, the Petitioner Corporation rightly dismissed the Respondent from service vide its order dated 20.08.1996 as he did not fulfil the essential qualification and also because he had breached Clause 3 of attestation form by submitting wrong information in the attestation form about his educational qualification.
15. Mr. K. K. Tyagi, learned counsel for Petitioner strongly argued that the learned Labour Court did not have jurisdiction to adjudicate the industrial dispute as the Respondent was working outside Delhi and his controlling office was within the State of Madhya Pradesh. It is his submission that the same averment was also made before learned Labour Court but learned Labour Court brushed aside the said averment by simply rendering a finding that the Petitioner is an undertaking of the Central Government. Further, the judgment cited in support of averment



of jurisdiction was not found relevant by learned Labour Court but again no reasoning was provided for the same.

16. Learned counsel further submitted that the learned Labour Court further committed a grave error when it relied upon the list containing names of other chowkidars who were illiterate and were still working as regular chowkidar in the Petitioner Corporation. The learned Labour Court failed to appreciate the fact that the CWC Regulations came into effect in 1986 and those chowkidars were appointed prior to 1986, whereas, Respondent was offered regular employment in the year 1995. Therefore, the whole basis of reasoning given by the learned Labour Court is erroneous and thus, the Impugned Award needs to be set aside.
17. To strengthen the arguments advanced, the learned counsel has relied upon the judgments delivered in *State of Haryana & Anr. Vs Rattan Singh* reported as (1997) 2 SCC 491; *Delhi Transport Corporation Vs Nihal Singh* reported as 2010 SCC Online Del 1797; and *Birmati Vs Presiding officer Industrial Tribunal-II & Ors.* having Neutral Citation No. 2022/DHC/003599.
18. Lastly, Mr. Tyagi asseverated that the Respondent submitted a forged and fabricated document before Petitioner, so such person should not be provided with the relief of reinstatement and he was rightly terminated from service by Petitioner Corporation. With these submissions, learned counsel for Petitioner prayed for setting aside of the Impugned Award.



**SUBMISSIONS MADE ON BEHALF OF RESPONDENT/
WORKMAN**

19. Mr. Vivek Sharma, learned counsel appearing on behalf of Respondent vehemently argued that the Respondent was provided employment as chowkidar in terms of the Agreement dated 10.04.1986 entered into between the father of Respondent and Petitioner. It is his contention that the said agreement did not mention any such term like the Respondent would have to comply with the CWC Regulations or that Respondent would have to be educated. Therefore, Petitioner could not have later on terminated Respondent from service on the basis that he was not having educational qualification till middle class. This act of Petitioner is in violation of the Agreement dated 10.04.1986.
20. Further, it is the argument of Mr. Vivek Sharma that the Respondent had been stating since the very beginning that he was illiterate and did not know how to read and write. It has never been the claim of the Respondent that he was class VIII pass. Mr. Vivek Sharma averred that the top management of the Petitioner Corporation wanted their related persons to be employed with the Petitioner Corporation and did not want Respondent to keep working as chowkidar in Petitioner Corporation, so they implanted the forged and fabricated Transfer Certificate along with attestation form. Respondent had got his attestation form and other forms filled by other persons as he did not know how to read and write, and it is alleged that



due to this may be wrong information might had been filled in the forms. Mr. Vivek Sharma further argued that Respondent was also once beaten by a sweeper during his duty so as to threaten him to leave the job.

21. It is the contention of Mr. Vivek Sharma, learned counsel for the Respondent that the Workman was doing tremendously well in his job. He fulfilled his duties with braveness and boldness which was even recognized by the management of Petitioner Corporation and for which he was even rewarded cash price by the Petitioner. It is asseverated by Mr. Vivek Sharma that this shows that the Respondent was completely fit and competent for the job of chowkidar and his being illiterate was not affecting his performance at all. Under these circumstances, Respondent should not be terminated from service for not having educational qualification till middle class.

22. In the light of these arguments, learned counsel for the Respondent prayed before this Court to not to interfere with the Impugned Award while exercising limited jurisdiction under Article 226 of Constitution of India especially when the Petitioner has not been able to bring forth any error patent on face of record.

LEGAL ANALYSIS

23. This Court has heard the arguments advanced by both the learned counsel for the parties and also examined the Labour Court record and the judgments relied upon by the parties.



24. The first issue which needs to be adjudicated by this Court is the issue of jurisdiction.
25. It was the contention of Mr. K. K. Tyagi, learned counsel for the Petitioner that the learned Labour Court did not have territorial jurisdiction in adjudicating the dispute as no cause of action arose in Delhi and the fact that Head Office of Petitioner is situated in Delhi cannot be a reason for jurisdiction with Industrial Tribunal in Delhi. This Court agrees with the contention raised by the learned counsel for Petitioner. It would be apt to refer to the decision of the Hon'ble Supreme Court of India in ***V.G. Jagdishan Vs M/s Indofos Industries Limited***, reported as (2022) 6 SCC 167, in this regard wherein the Hon'ble Supreme Court held as follows:

“6.1. From the findings recorded by the Labour Court, Delhi and the learned Single Judge and the Division Bench of the High Court, it is not much in dispute that the workman was employed as a driver at Ghaziabad office. He was working at the Ghaziabad. His services were retrenched at Ghaziabad. All throughout during the employment, the workman stayed and worked at Ghaziabad. Only after the retrenchment/termination the workman shifted to Delhi from where he served a demand notice at Head Office of the Management situated at Delhi. Merely because the workman after termination/retrenchment shifted to Delhi and sent a demand notice from Delhi and the Head Office of the Management was at Delhi, it cannot be said that a part cause of action has arisen at Delhi. Considering the facts that the workman was employed at Ghaziabad; was working at Ghaziabad and his services were terminated at Ghaziabad, the facts being undisputed, only the Ghaziabad Court would have territorial jurisdiction to decide the case. As such the issue involved in the present case is no longer res integra in view of the decision of this Court in the case of



Eastern Coalfields Ltd. and Ors. Vs. Kalyan Banerjee; (2008) 3 SCC 456. In the case of Eastern Coalfields Ltd. (supra) the workman was employed in Mugma area in the district of Dhanbad, Jharkhand. His services were terminated at Mugma. However, the workman filed a writ petition before the Calcutta High Court. On a preliminary objection taken the Calcutta High Court held that since the workman was serving at Mugma area under the General Manager of the area which is the State of Jharkhand, the Calcutta High Court had no jurisdiction. Affirming the aforesaid decision, this Court held that the entire cause of action arose in Mugma area within the State of Jharkhand and only because the head office of the company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court particularly when the head office had nothing to do with the order of punishment passed against the workman. In the present case also, the workman was employed at Ghaziabad; he was working at Ghaziabad and his services were also terminated at Ghaziabad by the office at Ghaziabad where he was employed."

26. In the present case also, it was the case of the Respondent that since the Head Office of the Petitioner Corporation was in Delhi and he was also residing in Delhi so the learned Labour Court had the jurisdiction to decide the industrial dispute raised by him. Mr. Tyagi, learned counsel for Petitioner pointed out that the original appointment letter dated 20.06.1987 was issued by Central Warehousing Corporation (Base Depot), Loni, Ghaziabad and his first appointment was at Loni Office. The Respondent workman was in the Lucknow region throughout. At the time of termination, he was working in Bhatapura, Madhya Pradesh. Therefore, on the basis of legal position laid down by Hon'ble Supreme Court, as explained above, the learned Labour



Court did not have jurisdiction to adjudicate the matter. However, it is pertinent to note that the Petitioner did not raise any ground before this Court that Petitioner had faced any prejudice or any harm due to the fact that the learned Labour Court did not have the jurisdiction. Neither, the Petitioner has pleaded before this Court any kind of biasness or arbitrariness from the learned Labour Court nor it is Petitioner's claim that it was not able to contest the industrial dispute properly due to lack of jurisdiction of learned Labour Court, so it would not cause any harm or prejudice to Petitioner if this Court sets aside the issue of jurisdiction and decides the present Writ Petition on its own merits.

27. On merits, the argument of Mr. Tyagi, learned counsel for Petitioner was very simple that the Respondent had produced a forged and fabricated document before Petitioner with respect to his educational qualification, so, once his transfer certificate was found to be false, it meant that Respondent did not have the required educational qualification for the regular post of chowkidar as per the CWC Regulations, 1986. It was the contention of the learned counsel that under these circumstances, Respondent was rightly terminated from service by Petitioner Corporation.

28. *Per contra*, it was submission of Mr. Sharma, learned counsel for Respondent that the Respondent had stated in the beginning itself that he was illiterate and he never claimed himself to be class VIII pass. Further, it was his argument that there were



several other chowkidars who were illiterate and were offered the regular post of chowkidar. Mr. Sharma took attention of this Court to Annexure P-3 of Labour Court record i.e. seniority list of chowkidars, to show the names of chowkidar who were illiterate but still working with Petitioner Corporation.

29. At the very outset, it is observed by this Court that the Respondent was working as daily wage chowkidar for 7 years, i.e. from the year 1986 till 1995, with the Petitioner Corporation. He kept on requesting for regularization of his position as a chowkidar but his requests were not being entertained at that stage. Later, he was left with no other option so he raised an industrial dispute in this regard before the learned Labour Court. However, the dispute did not proceed as the Petitioner offered regular appointment to Respondent as chowkidar vide Memorandum dated 08.09.1995.
30. Pursuant to getting a regular appointment, his documents were verified and as per the Petitioner, on such verification it was found that the Respondent had made a false claim about his educational qualification. Respondent's class VIII Transfer Certificate was found to be forged and fabricated on verification by Petitioner. The said document was declared forged on the basis of reply of Principal to the Letter dated 05.07.1996 seeking verification of Transfer Certificate. Subsequently, the Respondent was terminated from his service for furnishing false information in Attestation form dated 18.09.1995 and for not being qualified as per CWC (staff) Regulations, 1986.



31. This Court has examined the Labour Court record and particularly the documents - Application dated 19.06.1987 of Sh. Ajab Singh (Father of Respondent), Letter dated 04.04.1990 of Warehouse Manager, Loni, Attestation Form dated 18.09.1995 and Joining Report dated 22.09.1995. On perusal of these documents, it is clear that the Respondent at the very inception of his employment had stated that he had studied till class VIII but, it seems that he changed his stance at the time of initiation of industrial dispute before learned Labour Court.
32. This Court has also perused the Annexure P-3 of Labour Court record i.e. seniority list of chowkidars dated 19.10.1995. A perusal of the same shows that there were a few chowkidars, who being illiterate, were retained as regular chowkidars by Petitioner Corporation. Mr. Tyagi, learned counsel for Petitioner had rebutted this argument by submitting that these chowkidars were appointed by the Petitioner prior to coming into force of CWC Regulations in 1986 and no illiterate chowkidar was appointed for regular post pursuant to coming into effect of CWC Regulations, 1986.
33. This Court has examined Annexure P-3 carefully. As per the said document, all those illiterate Chowkidars were regularized during the year 1979, 1980 & 1981. There is no regularization after coming into effect of CWC Regulations, 1986.
34. It is a well-settled principle of law that no regularization can be effected contrary to the Recruitment Rules & Regulations. In the present case, the Respondent workman was admittedly not



having the requisite education qualification. Hence, he is not entitled for regularization.

35. Regarding his termination, the Respondent workman represented that he had passed VIII class and submitted the Transfer Certificate in this regard, however, on verification, the said Certificate was found to be forged. In this backdrop his services were terminated by the Petitioner. It is a well settled principle of law that no sympathy can be shown to a workman who procured employment on the basis of forged and fabricated Certificates. In this regard, the observation of the Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. Vs Sh. Rajendra D. Harmalkar*** reported as ***2022 SCC Online SC 486*** is relevant:

"29. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service."

36. Hence, this Court is of the considered view that the learned Labour Court erred in directing the reinstatement of the Respondent with 10% back wages.
37. It is noted that the Respondent Workman expired on 07.12.2014 and he was getting the payment under Section 17-B of the Industrial Disputes Act. In view of the law laid down by the



Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr.* reported as (2019) 4 SCC 534, the payment made under Section 17-B of the ID Act is not recoverable. Hence, it is hereby clarified that no recovery can be initiated against the legal heir of the Respondent Workman on account of the payment made under Section 17-B of the ID Act.

38. In view of the detailed discussion herein above, the present Writ Petition is allowed. The Impugned Award is set aside. No order as to costs.

GAURANG KANTH, J.

JULY 06, 2023
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