

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

+ **W.P.(C) 1856/2003**

Judgment reserved on: 16.04.2015

Judgment pronounced on: 28.04.2015

**DELHI TOURISM & TRANSPORTATION DEVELOPMENT
CORPORATION LIMITED**

..... Petitioner

Through: Mr Vikrant Yadav, Advocate

versus

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL NO.III, DELHI
AND ANR.**

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner employer of respondent no.2 Girdhari Lal has challenged the award dated 19.07.2002 whereby an order for reinstatement of the workman with continuity of service and full back wages from the date of demand notice i.e. 10.05.1988 up to the date of reinstatement at the rate of last drawn salary or minimum wages, whichever is higher, was made.

2. The brief facts of the case are that the respondent no.2 was appointed on the post of Chowkidar on consolidated salary of Rs.350/- for a period of three months vide Office Memorandum No.F (A)/308/83/DTDC/11201

dated 27.09.1983. The respondent no.1 submitted his acceptance and joining report on 07.10.1983. As the vacancies on the post of Chowkidar and Dish Washer continued with the petitioner, the respondent no.2 was again appointed till 31.03.1984 vide order dated 18.01.1984 and then with effect from 02.04.1984 till 30.04.1984 vide office order dated 25.04.1984. Further vide office order dated 31.12.1984, term of ad-hoc appointment which was likely to expire on 31.12.1984 was extended for a further period of 90 days with effect from 02.01.1985 or till such time regular arrangement was made for these posts. Vide office order dated 06.03.1985 the respondent no.2 was offered a fresh appointment letter and subsequently by Office Order dated 29.03.1985 a fresh appointment for a period of 90 days was given to respondent no.2 with effect from 04.04.1985. Services of the workman were terminated on 15.05.1985 vide office order no.F/9/14/85/DTDC/3721. After about three and a half years the respondent no.2 raised an industrial dispute challenging his termination. A reference was made by the appropriate government vide order no.F.24 (4536)/89-Lab.35403-8 dated 30.10.1989 regarding illegality and unjustifiability of the termination of the services of respondent no.2. Both the parties completed their pleadings. Issues were framed. Evidences were led by both the parties

and thereafter the impugned award was passed.

3. The contention of the respondent no.2 before the Industrial Tribunal was for his termination on 15.05.1985 was in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), hence, the termination was illegal.

4. The petitioner had raised several preliminary objections including that the appropriate government was lacking jurisdiction. It had been submitted that Girdhari Lal had been working in New Delhi and the head office of D.T.D.C. was situated in Defence Colony and therefore, the reference could have been made only by the Labour Commissioner, South Zone, Tilak Khand, Giri Nagar, Kalka Ji, New Delhi and that there had been delay of three and a half years in raising the dispute which had defeated the claim of workman. The objection was also raised that the name of DTDC had been wrongly given in the array of respondents. It has also been submitted that Girdhari Lal was fully satisfied with the action of the petitioner relating to termination of his services and that is why he had not challenged his termination and remained quiet for three and a half years. The learned tribunal had considered all these objections of the DTDC in its award and dismissed the same.

5. The petitioner has challenged the said award on the grounds that the learned tribunal had failed to appreciate that respondent no.2 was neither a permanent nor a temporary employee and was purely an ad-hoc employee and his term of employment was for a limited period. His appointment was never extended but on each date he was given fresh appointment. There was no illegality in termination order of contractual appointment for a limited period. It is further submitted that the learned industrial tribunal could not have directed reinstatement and full wages as the same is beyond the scope of reference. It is further submitted that the dispute was raised after a gap of three and a half years which was highly belated and this shows that respondent no.2 had no grievance against the petitioner and he was satisfied with his termination. On these contentions it is submitted that the award is liable to be dismissed.

6. In the counter affidavit it is submitted by respondent no.2 that he was appointed on 27.09.1983 and continued without break up to 15.05.1985 and that the termination was illegal as it was in violation of Section 25-F of the I.D.Act. It is further submitted that the petition has no merit and is liable to be dismissed.

7. In the present case while the matter has been argued on behalf of the

petitioner, none had attended the proceedings of this court on behalf of the respondents on several dates. It is pertinent to mention here that the respondent no.2 had moved an application under Section 17-B of the I.D.Act. Vide order dated 06.10.2005, this court had directed the petitioner to make the payment of wages at the higher rate of the two wages between last drawn wages and the minimum wages notified by the authority from time to time with effect from 19.07.2002 subject to furnishing an undertaking by the respondent no.2. It is conveyed to the court by Mr.Vikrant Yadav, learned counsel for the petitioner that respondent no.2 had retired four years back and that the entire back wages stood paid to him.

8. The admitted facts of the case are that respondent no.2 had joined the petitioner on 27.09.1983 and his services continued till 15.05.1985. His appointment had been for 90 days on ad-hoc basis which had been extended from time to time by giving the artificial breaks. The last extension which was given to him was vide office order dated 29.03.1985, for a period of 90 days with effect from 04.04.1985. However, before 90 days would have expired i.e. before the term of contract period would have expired, the services of respondent no.2 were terminated vide office order dated 15.05.1985. It, thus, is not a case where the employment had come to an

end on the expiry of the period of the contract. The services of respondent no.2 were terminated during the existence of the contract. It is also apparent from the facts on record that during the preceding year to the date of termination i.e. 15.05.1985, the respondent no.2 had worked with the petitioner for more than 240 days. It is not the case of the petitioner that they had paid the retrenchment compensation or notice pay to the respondent no.2 before his termination. The termination of respondent no.2, therefore, was in violation of Section 25-F of the I.D.Act. The learned tribunal had also reached to the same conclusion and the petitioner has failed to point out any error on the face of the award. The findings of the learned tribunal on the issue of wrong description of the name of petitioner are based on the facts proved before it. The tribunal has reached to the conclusion that the name of the management had been rightly mentioned in the array of respondents. The findings of the learned tribunal on the issue whether the claim was bad on account of the fact that the dispute had been raised after a period of about three and a half years, also does not suffer with any infirmity or illegality as it is based on the sound principles of law. Moreover, delay of three and a half years cannot be considered to be sufficient delay to hold that the claim of the workman was bad on account of laches or inappropriate

delay. Also on the issue of gainful employment of respondent no.2, findings of the learned tribunal cannot be faulted as the same are based on the evidences led before it and the petitioner has failed to show that the findings relating to grant of back wages is contrary to evidences or that there were no evidences on record to justify claim of workman for back wages. The award clearly shows that the learned tribunal, on the basis of facts, has awarded the back wages from the date of demand notice issued by workman. Thus, the learned tribunal has duly applied its mind.

9. It is a settled principle of law that an order of a tribunal or a labour court can be interfered with only when it is irrational or unjustified or against the principles of nature justice or where there is any illegality of such a nature which is apparent on the face of it. It is also settled principle of law that in exercise of its jurisdiction under Article 226 of the Constitution of India, this court does not sit as a court of appeal and it is not open to the court to do the reappraisal of the evidence. If the findings are based on cogent evidence, the courts are not required to interfere with such findings in exercise of its jurisdiction under Article 226 of the Constitution of India.

10. From the above discussion it is apparent that the award dated 19.07.2002 does not suffer with any illegality or irrationality, nor it is

against any principle of law.

11. The petition has no force in it. The same is dismissed with no orders as to cost. Trial court record be sent back.

**DEEPA SHARMA
(JUDGE)**

APRIL 28, 2015
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