

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

+ **W.P.(C) 5721/2002**

% Judgment reserved on 19.03.2015
Judgement pronounced on: 17.04.2015

HARYANA ROADWAYS DELHI Petitioner

Through: Mr Devender Kumar Saini,
Additional Advocate General

versus

RAKESH KUMAR AND ANR. Respondents

Through: Ms. S. Janani and Mr Deepak Goel,
Advs for Respondent No.1

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the award of the Presiding Officer of the Labour Court dated 07.02.2002 is under challenge. Vide this award, the petitioner had been directed to reinstate the respondent No.1 with full back wages and continuity in service.

2. The claim of the respondent No.1 before the Labour Court was that he was appointed as ticket verifier on 07.07.1984 and worked till 30.06.1985 as daily wager. His services were terminated without assigning any reason and without compliance of Section 25F of the Industrial Disputes Act as no retrenchment compensation and salary in lieu of one month's notice had been paid although he had completed 240 days in the calendar year and hence his termination was illegal. Also that his termination was in violation

of provisions of Section 25H for the reasons that while his services were terminated, his juniors were retained.

3. The defence of the petitioner before the Labour Court was two folded. First that the workman had not completed 240 days in one calendar year and second that the workman was appointed with effect from 07.07.1984 and he worked up to 30.06.1985 and he was not appointed thereafter and his services were discontinued in terms of his appointment.

4. The petitioner has assailed the award on the ground that the Labour Court has wrongly proceeded on the premise that the services of the respondent/workman were terminated/retrenched by the petitioner. It is submitted that there was a contract of service between the petitioner and the respondent and under that contract, he was appointed initially for a period from 07.07.1984 to 30.07.1984 and thereafter from 01.08.1984 to 31.08.1984 and in this way his contract was renewed from time to time and lastly from 01.06.1985 to 30.06.1985. It is submitted that these letters of appointment were for fixed period and on the expiry of that period, the contract of employment stood terminated automatically. It is submitted that in this case no termination of services of the workman had taken place and the case is covered under of Section 2(o)(bb) of the ID Act. Following is

the extract of the appointment letter:-

“The following persons are hereby appointed as per trade shown against each, on daily wages w.e.f. 01.06.85 to 30.6.85. They will be paid as per rate fixed by D.C. Delhi. Their services are liable to be terminated at any time without any prior notice or assigning any reason.”

It is submitted that from the above extract, it is established that the appointment was for a fixed period. Reliance has been placed on the findings in the case of *Escorts Ltd. vs. Presiding Officer and Anr.* 1997(11) SCC521, *M. Venugopal vs. Divisional Manager, LIC*, 1994(2) SCC 323, *Harmohinder Singh vs. Kharga Canteen* 2001(5) SCC 540, *Uptron India Ltd. vs. Shammi Bhan* 1998(6) SCC 538, *Sur Enamel and Stamping Workers (Pvt.) Ltd. vs. Their Workmen* AIR 1963 SC 1914 (V 50 C 275). It is further contended that since the services of the respondent were never terminated, the provisions of Section 25F, 25G, 25H and 25T of the ID Act are not applicable. It is submitted that the award of the Labour Court suffers with illegality and liable to be set aside.

5. In the counter-affidavit, the respondent-workman has taken the plea that the petitioner had not taken this plea before the Labour Court and the Labour Court did not have the occasion to consider the scope of Section

2(oo) (bb) of the ID Act and the petitioner cannot be allowed to take this new plea before this Court so the petition is liable to be dismissed. It was further contended that this Court cannot re-appreciate the evidences on record and there is no error in the award. It is further contended that findings in the case of **Escorts Ltd.** (*supra*) is not applicable in the present case since the judgment is very short and the relevant judgments of the Supreme Court have not been considered in this case and also in the said judgment, it is clarified that the contract of service with regard to casual labour is not covered under Section 2(oo)(bb) of the ID Act. The services of the daily wager were not considered in the said judgment and the Supreme Court had only considered the regular service. It is submitted that in the present case there has not been any regular appointment and he was only appointed as a daily wager. It is further submitted that judgment in the case of **Harmohinder Singh** (*supra*) is also not applicable as it relates to the regular contract of service and in that case there was only one contract of service and there was no allegation of unfair labour practice and victimisation. It is submitted that since there was no regular contract of service, hence, Section 2(oo)(bb) of the ID Act is not applicable in the present case. It is submitted that appointment orders were issued months after months and also the

appointments as daily wagers were regularized by issuing subsequent orders and it has been done with mala fide intention to deprive the respondent of the benefits of Section 25F, 25G, 25H. It is submitted that termination of services of the respondent is covered under Section 2(oo) of the ID Act and exception of Section 2(oo)(bb) is not applicable. It is further submitted that findings in **Uptron India Ltd.** (*supra*) is also not applicable rather it supports the case of the respondent, wherein it has been held that while terminating the services of an employee, the principle of natural justice has to be complied. As regards the findings in the case of **M. Venugopal** (*supra*), it is submitted that in that judgment, the provisions of Section 25J of the ID Act has not been considered and the Court did not consider the case of **Life Insurance Corporation of India vs. D.J. Bahadur and Others** 1980 Lab.I.C. 1218, (Three Judge Bench), wherein the Supreme Court had held that ID Act being a Special Act will prevail over the LIC Act, 1956 which is a General Act. It is submitted that there was only a passing reference of Section 2(oo) of the ID Act and the matter was not considered in a proper perspective and the case was decided basically on the ground that LIC Act, 1956 would prevail over ID Act, without considering the effect of Section 25J of the ID Act and without considering the case of **D.J. Bahadur** (*supra*).

It is further submitted that there is clear violation of Section 25H of the ID Act since the juniors were retained while his services were terminated. It is further submitted that findings in the case of **Sur Enamel and Stamping Works Ltd.** (*supra*) is also not applicable because it was decided prior to the amendment of the ID Act and hence the petition is liable to be dismissed.

6. Learned counsels for the parties have addressed the argument and parties have also submitted the written submissions.

7. Learned counsel for the petitioner has argued that the contention of the respondent that the petitioner did not take plea of Section 2(oo)(bb) of ID Act is wrong and misconceived. It is argued that provisions of law need not be reproduced in evidence. It is submitted that the petitioner had pleaded in the written statement that the services of the petitioner were not extended on expiry of his period of employment and thus all the material facts were mentioned in the written statement. It is argued that Court cannot ignore the law. Applicability of Section 2(oo)(bb) is question of law and the Court was bound to consider this provision of law while disposing of the petition and since it had failed to do, the award is liable to be struck down. It is further argued that applicability of Section 25F presupposes the retrenchment of a workman and this provision is not applicable when there is no retrenchment.

8. On the other hand, it is argued on behalf of the respondent that in the written statement, the petitioner had not taken the plea that their case is covered under Section 2(oo)(bb) of the ID Act and this aspect has not been dealt with even in the evidence led by the Management before the Labour Court. It is submitted that since there was no pleading, no evidence and no contention before the Labour Court, the Labour Court had proceeded on the basis of the material before it and passed its award and petitioner cannot be allowed to take the new plea before this Court. Reliance is placed on the findings in the case of **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Limited** (2014) 11 SCC 85, **General Manager, Haryana Roadways vs. Rudhan Singh** (2005) 5 SCC 591, **Devinder Singh vs. Municipal Council, Sanaur** (2011) 6 SCC 584 and also on **Municipal Corporation of Delhi vs. Jai Veer and Another** 2004(1) SLR322 and **Hajinder Singh vs. Punjab State Warehousing Corporation** 2010 (3) SCC 192.

9. I have heard the arguments and given due consideration to the rival contentions and the written submissions.

10. It is the admitted case of the parties that the workman had worked with the Management for the period from 07.07.84 to 30.06.85 as a ticket verifier. His appointment was as a daily wager. Appointment letters were

issued to him for the periods 07.07.84 to 30.07.84 and then from 01.08.1984 to 31.08.1984 and in this way, his appointment continued by issuance of new appointment letters till the last letter of appointment for the period of 01.06.85 to 30.06.1985.

11. It is apparent that while the respondent contended that his service was terminated, the plea of the petitioner was that the service of respondent was dispensed with on expiry of his term of contract on 30.06.1985.

12. The contention of the petitioner before this Court is that the Labour Court has not considered this aspect and has not discussed the plea raised by the respondent and had proceeded on the premise that services were terminated. It is submitted that the case was squarely covered under Section 2(oo)(bb), but the Labour Court has failed to apply the said law.

13. The contention of respondent-workman is that the petitioner had not taken this plea before the Labour Court and did not argue that his case was covered under Section 2(oo)(bb) of the ID Act.

14. The first and foremost question that comes up for consideration before this Court is whether the petitioner has come up before this Court with a new plea or had he taken this plea before Labour Court also.

15. Let me thus see if there were pleadings of the Management before the

Labour Court which could show that he had pleaded what he has contended before this Court. The copy of the written statement filed before the Labour Court has been placed on record by the petitioner. Para 4,5,6 and 7 of the written statement are reproduced as under:-

“4. Para No.4 of the claim statement is admitted to the extent that the workman was appointed w.e.f. 7.7.84 and he worked up to 30.06.85. It is wrong and denied that the services of the workman were terminated. The workman was daily wages. He was not appointed after 30.06.85 as the services of the workman were not required after 30.6.85.

5. Para No.5 of the claim statement is wrong and denied. It is wrong that the services of the workman were terminated, in fact, in terms of his appointment, he was not appointed after 30.06.85.

6. Para No.6 of the claim statement is wrong and denied. It is also wrong that the services of the workman were terminated. He was not appointed w.e.f. 17.7.85 in terms of his appointment. It is also wrong that Chowkidar of Haryana told that the services of the workman has been disputed with.

7. In reply of para No.7, it is submitted that it is wrong and denied that the services of the

workman are on whims and fancies of the authorities. He was discontinued in terms of his appointment. It is wrong and denied that judgments of various High Court and Supreme Court are not honoured.”

It is apparent that in these paragraphs while the petitioner has denied the contentions of the workman that his services were terminated, has also pleaded that *he was not appointed after 30.06.1985 as the services of the workman was not required after 30.06.1985* and that “*he was discontinued in terms of his appointment.*”

16. From these paragraphs in the written statement, it is apparent that the stand of the Management before Labour Court had also been that the services of the respondent were not terminated. The contention of respondent that the petitioner had not pleaded the facts relating to discontinuance of services on non-renewal of contract of service thus has no force. There were clear and unambiguous pleading of facts relating to discontinuance of service in terms of contract before Labour Court. Yet, the Labour Court had not taken note of it and has totally ignored it. The issue before the Labour Court thus was whether the services of the workman were terminated or not. It is apparent from the award that the Labour Court has

not dealt with this issue. The findings regarding the termination of the services of the workman are reproduced as under:-

“Issue No.1

The burden to prove this issue lies on the workman. In support of its case he examined himself as WW1. It is admitted case of the parties that workman was employed with the management up to 30.06.85. It is also admitted that no domestic enquiry was held nor retrenchment compensation was handed over to the workman before terminating his services. Even the reasons have not been cited by the management while terminating the services of the workman.”

17. This clearly shows that the Labour Court had presumed that it is a case of termination. Since there was a clear contention on the part of the petitioner in the written statement that services were not terminated, but the contact of service was not renewed on its expiry, it cannot be said that the petitioner had not pleaded the facts to show that there was no termination of the services. It was not a bald denial on the part of the petitioner that the services of the workman were not terminated. The evidences in support of contention were also led by the petitioner before Labour Court as the witness Deveki Nandan brought the service record and proved the

appointment letter as MW1/1, yet there is no discussion of such vital, relevant and admissible piece of evidence in the award. Section 2(oo) deals with the definition of the retrenchment. It reads as under:-

“2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

- (a) voluntary retirement of the working; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;
- (c) termination of the service of a workman on the ground of continued ill-health;”

18. Termination is retrenchment if it is done for any reason whatsoever however termination is not retrenchment if covered under any of the

exceptions (a) and (b) or (bb) and (c). Under Section 2(oo) sub-clause (bb) termination of service of a workman as a result of non-renewal of the contract of employment on its expiry, is not a retrenchment. It is apparent that despite the fact that petitioner had taken categorical plea before Labour Court that the services of the workman were not terminated, but his contract was not renewed as his services were not required thereafter and he was discontinued in terms of his appointment, the award is silent and these contentions were totally ignored. The Labour Court has misconstrued the facts and has ignored the admissible facts and evidence in support of these facts.

19. While discussing the limitations on issuance of Certiorari by the High Courts under Article 226 of the Constitution of India, the Supreme Court in **Syed Yakoob Vs. K.S. Radhakrishnan** AIR 1964 SC 477 in para 7 has held as under:-

“7.There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be

reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.”

(Emphasis is mine)

20. The order of the Labour Court is patently illegal and is liable to be set aside. The order of the Labour Court is hereby set aside and the matter is remanded back to the Labour Court with a direction to reconsider the matter afresh in its totality and pass an award preferably within two months of receipt of this order.

The petition stands disposed of in above terms.

**DEEPA SHARMA
(JUDGE)**

APRIL 17, 2015

BG