

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7694/2002**

Judgment reserved on: 10.04.2015

Judgement pronounced on: 17.04.2015

DELHI STATE CIVIL SUPPLIES CORPN. LTD. Petitioner

Through: Ms. Anju Bhattacharya, Advocate

versus

PRESIDING OFFICER & ANR. Respondents

Through: Mr. Rakesh Aggarwal, Advocate

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the impugned award, the Labour court reached to the conclusion that the termination of the workman on 14.06.1985 without holding an enquiry into the misconduct was bad and that the management has failed to prove that misconduct in the court and since there was no compliance of Section 25F of the Industrial Disputes Act, the order of reinstatement of the workman with full back wages and continuity of service was passed.

2. The said award has been challenged by the petitioner on several grounds. The copies of the statement of claim/written statement and the

rejoinder, which were part of the trial court record has been placed on record alongwith the present writ petition.

3. I have heard the arguments of learned counsel of parties and have perused the record.

4. The following reference was made to the Labour Court:-

“Whether the termination of services of Sh.Bishan Swaroop Vashist is legal and justified and if not to what relief is he entitled and what directions are necessary in this respect?”

5. Pursuant to the said reference, the workman filed the statement of claim wherein he has alleged that he had been appointed with the management on 31st March, 1983 at a monthly salary of Rs. 400/- and his services were initially terminated on 14th June, 1985. He sent a protest letter dated 16th August, 1985 by registered A.D No.77 dated 19th September, 1985 and thereafter he was again taken back in the employment w.e.f. 21st June, 1985. He worked on that post till 13th July, 1985. He was thereafter again appointed as a daily wage helper. He was harassed and he was not given any work w.e.f. 9th May, 1986 stating that “ your Muster-Roll has expired”. He has also alleged that while he was denied the work, his juniors were retained. He sent a registered demand notice vide demand letter no. 2903 dated 14th June, 1986 which was duly received by the management but

was not replied. On these facts, he has also alleged that he remained unemployed from the date of termination.

6. The contention of workman before labour court was that his termination **w.e.f. 9th May, 1996 was illegal.**

7. The management filed a reply to the Statement of Claim. The management/petitioner had denied the appointment of the workman/respondent w.e.f. 31st March, 1983 but had alleged that the workman was appointed w.e.f. 28th June, 1983 as per letter no. 1(22)/82-DSCSC/5816 dated 22nd June, 1983 on the consolidated salary of Rs.400/- per month. It is further submitted that services of the workman were discontinued as per order no. F.1(658)/83-DSCSC/651-24 dated 14th June, 1985 under Rule 5 of the CCS (TS) 1965 applicable to the applicant and he was paid one month salary as per the rules which was duly accepted by the workman towards full and final settlement of all his claims. The workman was re-appointed w.e.f. 21st June, 1985 on his personal representation as the helper on daily wages at the rate of 13.60 per day at Safdarjung Flyover (Mobile Unit) as per formal order No.F.1(685)/83-DSCSC/8283-85 dated 06.08.1985.

8. The contention of the petitioner is that the workman did not bother to

attend the office after 9th May, 1986 and left the job on its own without any information and any application. The petitioner/management however continued to carry the name of the workman upto 27th September, 1986 as per Admn. order no. (863)/84-DSCSC/4826 dated 26.08.1986.

9. The receipt of the demand notice to the workman by registered post is also admitted and it was submitted that the representation of the workman was rejected and workman was accordingly informed.

10. It was on these facts that the parties had led their evidences before the labour court.

11. From the perusal of the award, it is clear that the labour court had not applied its mind in this case. In the award, the labour court has not even recorded the complete facts of the case and has not discussed all the contentions of the parties.

12. As per the Statement of Claim, it is apparent that the workman had challenged the termination w.e.f. 09.05.1996 yet the Labour Court has proceeded in the following manner:-

“ 8. Issue No.1

The burden to prove this issue lies on the workman. The case of the workman is that he worked with the management from 28.06.83 to 14.06.85 and his services were terminated on 14.06.85 without any notice and domestic enquiry. The management on the other hand admitted the tenure of service

and termination date of the workman. It pleaded that since the workman remained absent from 15.10.84 to 18.10.84, 22-10-84, 25-10-84 and again absented on 02-05-85 the workman was issued memorandum about his unauthorised absence and calling upon him to resume duty. Since he did not file any reply to the memorandum his services were terminated. He was again appointed as a daily wager helper after a week on 21-06-85 but left the management on 09-05-86 of his own accord and thereafter never reported for duty. It is clear from the facts stated above that the workman remained in continuous service with the management from 28-06-83 to 14-06-85 when his services were terminated by the management due to his absence. The management did not hold any domestic enquiry into the misconduct of absenteeism which renders the action of the management highly unwarranted. Admittedly, the workman was reappointed on 21-06-85 as a daily wager who left the management on 06-05-86. The management failed to hold the enquiry into the misconduct which is essential before taking any action against the workman. The management even failed to prove the misconduct in the Court.”

13. The labour court has adjudicated the legality or illegality of termination of the workman on 14.06.85 and held that termination was wrong as no inquiry was done into misconduct and concluded accordingly, while simultaneously he has also held that “*Admittedly, the workman was reappointed on 21-06-85 as a daily wager who left the management on 06-05-86.*” From this noting in judgment, it is clear that labour court concluded that “it was an admitted fact that workman left the management on 06.05.1986”, while it is contrary to the facts on record. The workman has

categorically contended in para 4 of his Statement of Claim that he was not assigned any work w.e.f. 09.05.86 on the pretext that muster roll had come to an end. It is an admitted fact that after the termination of the workman on 14.06.85, he was taken back in the employment by the management and has worked till 8th May, 86.

14. The issue before labour court was whether the services of workman were terminated as 09.05.86 on pretext of end of his muster roll or he stopped reporting on duty w.e.f. 09.05.86 and still maintained his name in its muster-roll till 28th August, 86. The issue for adjudication before the labour court thus was whether the services of workman were terminated on 9th May, 86 by denying to work to him or whether the workman had abandoned his services w.e.f. 9th May, 86. This issue has not been dealt with by the labour court.

15. It is a settled law that in exercise of the jurisdiction under Article 226/227 of the Constitution of India, this court does not sit as a court of appeal over the award of the inferior court. Only an error of law which is apparent on the face of the record can be corrected. It is shown that certain important facts on record have not been considered while arriving to the conclusion when these facts are material for determination of the real issue

between the parties. The award of the labour court therefore suffers immensely both on facts as well as on application of law. It is apparent that the entire award is contrary to the admissible facts and evidences on record and the court has based its finding on non-issues.

16. In view of the above discussion, the award dated 01.02.2002 is set aside. The matter is remanded to the labour court to re-hear the parties and give its findings preferably within two months of the receipt of this order.

**DEEPA SHARMA
(JUDGE)**

APRIL 17, 2015
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