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

Date of Decision: 7th October, 2015

+ **W.P.(C) 1132/2011**

OM PRAKASH AND ANR.

..... Petitioner

Through: Mr Rajiv Agarwal and Mr Sachin
Kumar, Advocates

versus

DELHI JAL BOARD

..... Respondent

Through: Mr Rajesh Sachdeva and Ms Shobha
Gupta, Advocates

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition is to the Award dated 22nd February, 2010 passed by the Industrial Tribunal-II, Karkardooma Courts, Delhi in ID No. 114/2008 whereby it was held that the workman was entitled to be considered for regularization on their respective posts on the basis of policy of regularization followed by Management, if they fulfil the criteria for regularization but they are not entitled for regularization from initial date of their engagement, i.e., 1989.

2. The petitioner No.1 joined the services of the respondent w.e.f. 1st June, 1989 as a *chowkidar* while petitioner No.2 joined services of the respondent w.e.f. 10th November, 1989 as *beldar*. Services of both the petitioners (hereinafter referred to as “workmen”) were terminated on 1st

October, 1991. The termination was challenged by the workmen and vide Award dated 31st May, 2001, the termination was held to be illegal and unjustified. The workmen were held entitled for re-instatement in service with 50% back wages. It is the case of the workmen that despite reinstatement, the respondent failed to regularize their services. Therefore, the union of the workmen, namely, the Municipal Employees Union espoused the cause of the workmen for regularization and effected legal demand notice on 22nd November, 2005. As the management failed to respond to the legal demand notice, an industrial dispute was raised by the union by filing a statement of claim before the Conciliation Officer. On failure of conciliation proceedings, GNCT of Delhi referred the following dispute to the Industrial Tribunal:-

“Whether demand of (i) Sh. Om Prakash, S/o Sh. Bhairo Ram Chowkidar and (ii) Sh. Bhagwati Prasad, S/o Sh. Shiam Dutt Beldar for regularization on their respective posts from the initial date of joining is legal and/or justified/and if yes, to what relief they are entitled?”

3. The statement of claim was filed by the workmen before the Industrial Adjudicator alleging that they were entitled to be treated as regular and permanent employees from the initial date of their joining in proper pay scale and allowances on the principle of “equal pay for equal work” at par with their counter parts. A written statement was filed by the respondent disputing the claim of the workmen on the ground that the management has its own policy of regularization in phased manner according to which an employee should complete 240 days in one calendar year and 720 days in a period of four years. The workmen never worked for 240 days in any calendar year preceding to their alleged termination of service, hence they

are not entitled for regularization. Both the parties adduced their evidence. The Industrial Adjudicator came to a conclusion that vide award Ex.WW1/4, the workmen were ordered to be reinstated in service “with immediate effect” and, as such, there was nothing in the award that the workmen were actually to be reinstated with continuity of service. In the absence of such direction, the period of absence of the workmen after termination of their services till the date of reinstatement cannot be taken into consideration for the purpose of computing continuity and total service of the workmen.

4. It was further observed that the ratio of *Secretary, State of Karnataka vs. Uma Devi and Ors.*, AIR 2006 SC 1806 is fully attracted to the facts of the present case. As per the case of the management, according to its policy of regularization of daily wagers/muster roll employees, an employee who has completed service of 720 days within a period of four years can be considered for regularization. Therefore, the workmen were entitled to be considered for regularization on their respective post on the basis of policy of regularization if they fulfil criteria set out in the policy. However, they were not entitled for regularization from the initial date of their engagement, i.e., 1989.

5. Assailing the findings of learned Industrial Tribunal, learned counsel for the petitioner submits that reinstatement of the workmen along with 50% of back wages implies that the workmen are deemed to be employed from the date of their initial appointment, i.e. 1989 and their seniority for the purpose of regularization has to be counted from that date. Relying upon *Vasantika R. Dalia vs. Baroda Municipal Corporation*, (1997) 5 SLR 752 and *Gurpreet Singh vs. State of Punjab and Ors.*, (2002) 9 SCC 492, it was

submitted that the mere fact that the word “continuity of service” has not been mentioned in the award does not mean that this relief was denied to the workmen. Once the workmen were directed to be reinstated in service along with back wages, the continuity of service is direct consequence. Back wages upto the period of 2nd May, 2005 stands paid in terms of the award. Further, it was not even the case of the respondent/management that there was any break in service of the workmen and the period of services rendered by them before their reinstatement is not to be considered for the purpose of their regularization. This was never part of the pleadings and the parties were not at variance in regard to the issue. The learned Industrial Adjudicator of its own proceeded to consider the said issue which is contrary to the settled legal position. A very technical approach has been adopted by the Industrial Adjudicator.

6. Reference was also made to the cross-examination of the respondent’s witness Sh. K.K. Sharma, who admitted that the workmen rendered continuous and uninterrupted service from their initial date of appointment till their services were terminated on 1st October, 1991. The counsel further submits that information was sought under Right to Information Act and the workmen were informed that the persons who were engaged with the management as *Beldar/Chowkidar* during the year 1989 have been regularized w.e.f. 1st April, 1985 under the Phase Programme of 1989-90. Even the management’s witness could not deny that the services of the *chowkidar* and *beldar* appointed after 1989 on muster roll have been regularized. As such, it was submitted that once the workmen were ordered to be reinstated in service with 50% back wages, it was to be treated as a case of reinstatement with continuity of service and, therefore, the matter be

remanded back to the Industrial Adjudicator for fresh decision.

7. On the other hand, learned counsel for the respondent submits that there is no infirmity in the award as there was no direction in the earlier award that the reinstatement was to be with continuity of service, therefore, no interference is called for.

8. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

9. The dispute which was referred to the Industrial Tribunal by GNCT of Delhi was “Whether the workmen were entitled for regularization on their respective posts from the initial date of joining”. It is not in dispute that the workman Om Prakash joined the management as *Chowkidar* on 1st June, 1989 while Bhagwati Prasad joined as *Beldar* on 10th November, 1989 as a daily rated/casual muster roll worker. Their services were terminated w.e.f. 1st October, 1991. An industrial dispute was raised by the workmen. Matter was referred to the Labour Court. Vide award dated 31st May, 2001, the termination was held to be illegal and the workmen were ordered to be reinstated in service “with immediate effect” and 50% back wages. Pursuant to this order, the workmen were reinstated in service and the back wages were also paid to them. Undisputedly, the respondent has a policy of regularization of daily wagers/muster roll employees. As per the policy, an employee who has rendered continuous service of 240 days in a calendar year or 720 days in a period of four years is entitled to be considered for regularization. However, it is the case of respondent that since the petitioners did not work for 240 days in any calendar year preceding to their

alleged termination of service, as such, they were not entitled for regularization.

10. The moot question for consideration is whether reinstatement “with immediate effect” would tantamount to “continuity of service”.

11. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. II, 3rd Edition, the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstatement" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.'

12. 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.

13. In ***Gurpreet Singh*** (Supra), the plaintiff's services were terminated. A suit was filed by him for declaring the order of termination as null and void. The suit was dismissed. The Lower Appellate Court held the termination to be illegal and directed reinstatement of plaintiff in service, however, he was held not to be entitled to any arrears of salary for the period for which he did not work. The plaintiff assailed the appellate decree by filing a second appeal. The High Court not only confirmed the decree of the Lower Appellate Court that the plaintiff will not be entitled to any arrears of salary but also further added that he will not get his continuity of service. The appeal was preferred before the Hon'ble Supreme Court and it was held as under:-

"Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside the part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above."

14. Again in ***Vasantika R. Dalia*** (supra), the petitioner was employed with Baroda Municipal Corporation as stenographer and her services were terminated without following requirement of Section 25F of Industrial Disputes Act. The Labour Court granted relief of reinstatement in favour of the petitioner without any back wages. The challenge was laid by Municipal Corporation contesting the relief of reinstatement as was granted by the Labour Court but this petition failed. The workman also filed Special Civil

Application No. 5497 of 1988 contesting the award denying back wages and consequential relief which was dismissed. As such, the award attained finality. The award granting relief of reinstatement was not implemented by the corporation. Therefore, a contempt petition was filed. However, the workman was reinstated in service and, therefore, the contempt petition was disposed of as having become infructuous. Thereafter, the dispute arose between the parties about the “continuity of service”. The Assistant Municipal Commissioner declined to grant any such relief. Therefore, the matter went to Gujarat High Court. It was held that once the relief of reinstatement was granted, continuity of service was the direct consequence rather inherent in the relief of this nature. The relevant observations are extracted as under:-

“By this award the relief of reinstatement has been granted but the relief of back wages has been denied specifically and the relief of continuity of service has not been denied in any terms except that along with the relief of reinstatement the word "continuity" has not been mentioned. It may be straightway observed that once the relief of reinstatement is granted, the continuity of service is the direct consequence rather inherent in the relief of this nature, more particularly when the Division Bench has already held that the termination was void. If the termination order was void the meaning is that in the eye of law the relief of reinstatement has to be granted as if the impugned award had never been passed. The question of back wages is, therefore, dependent on variable factors of gainful employment during the period of enforced idleness and therefore, in a given case the relief of back wages may not be granted depending upon the finding on the question of gainful employment or otherwise during the period of enforced idleness. When the relief of reinstatement is granted and the continuity of service is not specifically denied the party has to be relegated to the same position as was held by it at the time of termination. When the order of termination has been found to be void, the petitioner holds the relief of reinstatement with no mention of specific denial of continuity of service, the concerned workman has to be relegated to the position which was obtaining at the time of termination of her services and there is no question of denying the continuity of services for the period for which the services have been interrupted on account of an unlawful and void order.”

15. Again in ***Deepali GunduSurwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.*** (2013) 10 SCC 324, the question for consideration was entitlement of the workman for full back wages after the termination was held to be illegal and order for reinstatement in service was passed. Although in the present writ petition, this Court is not concerned with the grant of back wages because undisputedly the same were ordered and have been paid to the petitioner. However, certain observations regarding the effect of reinstatement in service have a bearing on the present case. Hon'ble Supreme Court noted the judgment rendered by two judge bench in ***J.K. Synthetics Ltd. v. K.P. Agrawal and Anr.***, (2007) 2 SCC 433 where it was held as under:-

"There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed."

16. Hon'ble Apex Court also noted the observation made by three judge bench in ***Hindustan Tin works(P) Ltd. vs. The Employees of The Hindustan Tin Works*** where it was observed as under:-

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law."

17. Various propositions culled out from the various judgments were laid down and the observation relevant to the present case is to the following

effect:-

*“The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal** (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”*

18. In view of the aforesaid decisions, coupled with the fact that while granting the relief of reinstatement even the back wages were also granted. That being so, the mere fact that along with the relief of reinstatement the word “continuity of service” has not been mentioned does not mean that the said relief was not granted. That being so, the mere fact that the word “with immediate effect” was mentioned in the award does not mean that the Court impliedly declined the relief of continuity of service.

19. There is another aspect of the matter. Even the respondent has not pleaded in the written statement that there was any break in service or that it was a case of fresh appointment or that the period of service rendered by them before their reinstatement cannot be taken into consideration for the purpose of their regularization on their respective posts. That being so, in the absence of any such pleading, the learned Industrial Adjudicator took a very technical view only on the basis of words “with immediate effect” to interpret that the benefit of continuity of service was not awarded to the petitioner and, accordingly, although it was observed that the workmen was entitled to be considered for regularization as per the policy of the management but they were held not to be entitled for regularization from initial date of their engagement, i.e., 1989.

20. Learned counsel for the petitioner relied upon ***Rameshwar Singh & Anr. vs. Delhi Jal Board***, 2014 SCC online Del 7335. It was also a case where the petitioners were muster roll workers. Their termination was held to be illegal and unjustified and they were reinstated in service with back wages. The workmen claimed regularization of their services in proper pay scale and allowances which was not acceded to by the management. Industrial dispute was raised. The matter came up before a Single Judge of this Court and it was observed that the workmen were continuously working with respondent for the last more than 30 years. The case was not for promotion of the petitioners but one of regularization. Keeping in view the fact that the workmen were working since long in the same post they were entitled to be regularized and this order was passed despite the fact that it was the case of the management that they did not fulfil the requisite qualification. An appeal was preferred before the Division Bench of this Court which was dismissed.

21. The present case rather stands on a much better footing as the respondent has not disputed that there is a policy for regularization of the muster roll employees. Petitioners have placed on record following information received by them under Right to Information Act:-

“The matter relates to seeking date of regularization in respect of the persons who were engaged on muster roll during the year 1989 as Beldar/Chowkidar with the department.

In this connection, it may be mentioned that the department has framed a policy of regularization in respect of Group-D(Un-skilled) Muster Roll workers inter alia stipulates that the muster roll workers who have been engaged in between a particular Block (a block comprises of two years as per decision of the Competent Authority) and have completed 720 days muster roll attendance in four years starting from first day of the block of two years and the last day of the fourth calendar years, only is considered for regularization.

Hence, only the muster roll workers who fulfil the above requirement in

accordance with the departmental policy of regularization is eligible for regularization. However, as per information sought by the applicant, it is submitted that the persons who were engaged with the department as Beldar/Chowkidar during the year 1989 and have possessed the above requirement, have been regularized w.e.f. 01.04.1995 under the Phased Programme of 89-90."

22. That being so, there is no need for remanding the matter to the Industrial Tribunal. The order of the Industrial Tribunal is modified only to the extent that the management will consider the case of workmen for regularization on their respective post on the basis of policy of regularization framed by the management treating them to be in continuous service from the date of their engagement, if they otherwise fulfil the criteria for regularization as per the policy of the management within a period of eight weeks of receipt of this judgment. Registry is directed to send copy of judgment to the respondent for compliance.

23. The petition stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

OCTOBER 07, 2015
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