

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

+ Judgment delivered on: November 27, 2015

% **W.P.(C) No. 5513/2004**

M/S MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Ms. Saroj Bidawat, Advocate.

versus

KRISHAN KUMARRespondent
Through: Mr. Rajiv Aggarwal and Mr. Sachin
Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Municipal Corporation of Delhi (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India assailing the validity of the impugned Award dated 07.07.2003 passed by the Presiding Officer, Labour Court No. IX, Karkardooma, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 187/95.
2. The brief facts as stated are that the respondent-workman, i.e., Shri Krishan Kumar joined the employment of petitioner-management, i.e.,

Municipal Corporation of Delhi as Mortarman w.e.f. 15.03.1989 as a daily muster roll worker and was allegedly being paid wages less than those fixed by the Delhi Administration under the Minimum Wages Act for skilled category of workers. The respondent-workman, i.e., Shri Krishan Kumar continued in the employment of the petitioner-management till 15.05.1993, on which date, without assigning any reason, his services were terminated. The action taken by the petitioner-management is violative of Sections 25-F, G, H and N of the Industrial Disputes Act, 1947, read with Rules 76, 77, and 78 of the Industrial Disputes (Central) Rules, 1957 and also violative of Articles 14, 16 and 39(d) of the Constitution of India.

The respondent-workman raised an industrial dispute and the same was referred by the Secretary (Labour), Government of NCT of Delhi, vide reference No. F-24(1057)95-Lab./20061-66 dated 11.07.1995 to the learned Industrial Adjudicator for adjudication on the following terms of reference:

“Whether Shri Krishan Kumar has abandoned the job or his services have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

The respondent-workman filed his statement of claim before the Labour Court, the petitioner-management filed its written statement and

thereafter, rejoinder on behalf of the respondent-workman was filed and after framing the issues, both the parties led their respective evidence on their behalf and thereafter, the Labour Court passed the impugned Award dated 07.07.2003.

Aggrieved by the aforesaid Award dated 07.07.2003, the petitioner, i.e., Municipal Corporation of Delhi, has preferred the present Writ Petition.

3. The learned counsel causing appearance on behalf of the petitioner-management, i.e., Municipal Corporation of Delhi has contended that the respondent-workman was never given employment on regular basis in a specific category of Mortarman, but was engaged as a daily rated *beldar* who is not entitled to any benefits of regular employee. Hence, the respondent-workman is not entitled for any relief of pay scale and therefore, the present Writ Petition is not maintainable. Reliance is placed upon the judgment rendered in the case of ***Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors., JT 1997 (4) S.C. 560.***

The learned counsel for the petitioner-management further argued that the respondent-workman has not worked for 240 days in the relevant calendar year, and the learned Industrial Adjudicator wrongly calculated the number of working days in the year 1991. He further argued that it was upon the respondent-workman to show that he has worked for more

than 240 days in the relevant year and relied upon the judgments, i.e., ***Municipal Corporation Faridabad vs. Durga Prasad (2008) 5 SCC 171*** and ***State of Madhya Pradesh vs. Arjun Lal Rajak, 2006 2 SCC 711*** and also submitted that it was the respondent-workman who has voluntarily abandoned the services of the petitioner-management.

The learned counsel for the petitioner-management further submitted that the respondent-workman was never terminated from service but it was he himself who stopped coming for service, i.e., the respondent-workman abandoned the services of the petitioner-management.

On the other hand, the learned counsel appearing on behalf of the respondent-workman has submitted that the respondent-workman has an unblemished and uninterrupted record of service to his credit and the job against which the respondent-workman was working is of a regular and permanent nature.

The learned counsel for the respondent-workman has further argued that the termination of the respondent-workman was illegal and no notice or notice pay was given thereby violating the provisions of Section 25-F and G of the Industrial Disputes Act, 1947.

The learned counsel further submitted that the respondent-workman has acquired the status of workman prior to his date of termination, i.e., 15.05.1993 and is unemployed since then. Therefore, the

respondent is entitled to be reinstated with continuity in service along with full back-wages.

4. In the instant case, the engagement of the respondent-workman as a daily rated worker with the petitioner-management has not been disputed by the petitioner-management, i.e., Municipal Corporation of Delhi in the written statement filed by them which is reproduced as under:

“(1)...But it is a fact that the workman was engaged as daily rated beldar to perform the work of daily wage beldar and he is not entitled to any benefits as claimed until and unless he is regularised in the particular grade, hence he is not entitled for any relief of pay-scale and usual allowances as well as other benefits...”

5. The plea that the respondent-workman has not completed 240 days in the calendar year 1992 loses its significance on account of deemed admission as the petitioner-management has not specifically denied in their written statement that the respondent-workman has not completed 240 days of continuous service in the relevant year/calendar year. The document, i.e., Ex MW 1/1 is an incomplete record for want of original document i.e., original complete muster roll and further, the same is coming on record without any explanation as to what prevented the petitioner-management from filing the original document along with MW 1/1 on the date of filing of written statement. Once, the respondent-workman has acquired the status of ‘workman’ within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, and completes 240 days of continuous service, his termination from the service/employment could

be valid only after the due procedure as laid down in Section 25-F of the aforesaid Act is followed. Section 25-F of the Industrial Disputes Act, 1947 is reproduced hereinunder:

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

6. The plea of the petitioner-management that the respondent-workman, being a daily rated worker, is not entitled to any benefit of Industrial Disputes Act, 1947 by placing reliance on the judgment, i.e., ***Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors., JT 1997 (4) S.C. 560***, loses its significance as in the instant case, the respondent-workman, who is a daily rated worker, worked for 240 days in the relevant year under the petitioner-management and has acquired the status of a ‘workman’ under Section 2(s) of the Industrial Disputes Act, 1947 thereby attracting the mandatory provisions of Section 25-F and Section 25-G of the Industrial Disputes Act, 1947. Reliance in this regard is placed on the judgment rendered by the Apex Court in the case of ***Asst.***

Engineer, Rajasthan Dev. Corporation and Anr. vs. Gitam Singh,
(2013) 2 SCC (LS) 369, wherein the Hon'ble Supreme Court made the following observations:

"10. In L. Robert D'Souza (1982) 1 SCC 645, this Court in paragraph 27 (pg. 664) held as under:

*27. ... Therefore, assuming that he was a **daily-rated worker**, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid.*

11. What has been held by this Court in L. Robert D'Souza, (1982) 1 SCC 645 is that Section 25-F of the Industrial Disputes Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition." (Emphasis Supplied)

However, there is no documentary evidence to suggest that the mandatory requirements under Section 25-F of the said Act, i.e., notice and notice pay was ever issued to the respondent-workman after the termination of his services on 15.05.1993 or that the petitioner-management adopted the due procedure in accordance with law as laid down by the Industrial Disputes Act, 1947 for termination of the respondent-workman's services. Therefore, the termination of the respondent-workman was not done in accordance with law and therefore, the termination is illegal.

7. The petitioner-management has further taken the plea that the respondent-workman was not terminated from his employment by the petitioner-management. Rather, it was the respondent-workman himself, who voluntarily abandoned the services of the petitioner-management. There is no documentary record to show that the respondent-workman has himself abandoned the services of the petitioner-management. The plea of abandonment taken by the petitioner-management loses its significance in the absence of any documentary evidence to this effect. The Division Bench of the Delhi High Court in the case of ***B.G. Saraswat vs. Engineers India Ltd., 61 (1996) DLT 588***, has made the observation that unless there is material available to show the intention on the part of the workman to totally give up duties, it will not be possible to arrive at the conclusion that the respondent-workman would have abandoned the services of the petitioner-management. Since, it is an admitted fact that the respondent-workman was under the employment of petitioner-management, it is for the petitioner-management to show the manner in which the workman was disengaged from the employment. Therefore, the plea of abandonment taken by the petitioner-management is without merit.
8. The Hon'ble Supreme Court in the case of ***Jasmer Singh vs. State of Haryana, (2015) 4 SCC 458***, has made the following observations:

“22. 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. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

9. As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no illegality and perversity in the impugned Award dated 07.07.2003.

Consequently, the present writ-petition is dismissed. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

I.S.MEHTA, J

NOVEMBER 27, 2015

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