

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

% *Date of decision : July 29, 2015*

+ **LPA 305/2013**

KRISHAN & ORS ..... Appellant

Represented by: Mr.Puneet Saini, Adv.

versus

THE MANAGEMENT OF THE  
AIR FORCE SCHOOL

..... Respondent

Represented by: Mrs.Rekha Palli, Sr. Advocate  
instructed by Mrs.Punam  
Singh, Ms.Shruti Munjal,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. Aggrieved by the order dated February 07, 2013 whereby in a writ petition filed by the respondent/ management being W.P.(C) No.2012/2006 the award dated October 10, 2005 directing reinstatement of the appellants with 50% back wages was modified to compensation in addition to the amount released under 17B, the appellants prefer the present petition.

2. The appellants nine in number were working as Sweepers/Mali with the respondent/management when their services were terminated. On an industrial dispute being raised the Labour Court vide the order dated October 10, 2005 drew an adverse inference against the management for not producing the best evidence i.e. the records of the appellants prior to 1998-99 and held that the termination was illegal since Section 25F ID Act was

not followed. Thus an award directing reinstatement of appellants 1- 6, 8 & 9 as Sweepers and appellant No.7 as Mali with continuity of service and 50% back wages @ last drawn wages of ₹53/- per day or the minimum wages fixed for the post by the Government whichever is higher was directed to be paid from the date of termination i.e. November 17, 1994 till date of their reinstatement.

3. Vide the impugned order the learned Single Judge noted that to show continuity of service and that the appellants have worked for 240 days in the preceding year they could only produce their identity cards which were valid for a period of three months each time and came to the conclusion that having discharged the initial burden the same shifts to the respondent/ management who ought to have produced the record which were not produced for the reason that the same were eaten away by white ants. Thus, the learned Single Judge refrained from interfering with the finding of the Labour Court that the appellants had worked for 240 days in the year immediately preceding the date of termination. In view of the fact that the appellants were casual labourers on daily basis, their appointment was not as per the recruitment rules through a regular process by inviting applications from employment exchange or by general advertisement and had worked for 2 – 6 years at the most, the learned Single Judge in view of the decision reported in (2009) 15 SCC 327 Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr. directed compensation as under:

| S.No. | Name of Workman | Compensation to be paid |
|-------|-----------------|-------------------------|
| 1     | Krishan         | ₹40,000/-               |
| 2     | Ramesh Kumar    | ₹40,000/-               |
| 3     | Virender        | ₹60,000/-               |

|   |              |           |
|---|--------------|-----------|
| 4 | Umesh        | ₹50,000/- |
| 5 | Puran        | ₹40,000/- |
| 6 | Babu Lal     | ₹60,000/- |
| 7 | Rajender     | ₹40,000/- |
| 8 | Vinod Kumar  | ₹20,000/- |
| 9 | Smt. Kamlesh | ₹60,000/- |

4. The learned Single Judge also noted details of the amount received by the appellants under Section 17B ID Act which was as under:

| S.No. | Name of Workman | Total amount paid |
|-------|-----------------|-------------------|
| 1     | Krishan         | ₹1,45,109/-       |
| 2     | Ramesh Kumar    | ₹1,35,229/-       |
| 3     | Virender        | ₹1,35,229/-       |
| 4     | Umesh           | ₹1,48,083/-       |
| 5     | Puran           | ₹1,35,229/-       |
| 6     | Babu Lal        | ₹1,31,329/-       |
| 7     | Rajender        | ₹1,44,005/-       |
| 8     | Vinod Kumar     | ₹1,35,229/-       |
| 9     | Smt. Kamlesh    | ₹1,36,780/-       |

5. It is not disputed by the appellants that they were not appointed through a regular recruitment process by inviting applications. They were working intermittently on daily wages and thus in view of the decision of the Supreme Court in *Jagbir Singh (supra)* there can be no directions for reinstatement with back wages automatically. The amount of compensation of ₹40,000/- as noted above to each of the appellants along with the amount received under 17B ID Act cannot be held to be inadequate warranting interference by this Court. We find no reason to interfere with the impugned order.

6. Appeal is dismissed.
7. No costs.

**(MUKTA GUPTA)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**JULY 29, 2015**  
**'ga'**