

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

Date of Decision: 02.09.2015

+ **W.P.(C) 3326/2012**

STATE OF HARYANA & ORS.

..... Petitioner

Through: Mr Vikram Saini, Adv.

versus

ASHOK KUMAR

..... Respondent

Through: None

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this writ petition under Articles 226 and 227 of the Constitution of India is to the award dated 03.03.2011 passed by POLC – VII, Karkardooma Courts, Delhi in ID No. 48/07 whereby the petitioners were directed to reinstate the respondent – workman with continuity of service and full back-wages till the date of reinstatement.

2. The factual matrix of the case leading to the filing of the instant writ petition are that according to the respondent – workman he was appointed as a *baildar* by the petitioner no.1 in the year 1997 and was drawing last wages of Rs.2860/- per month at the time of his termination in February, 2005. It is further his case that he continuously worked as a *baildar* and his name was duly recorded in muster roll of each month. He had completed the statutory period of 240 days without any break. In these circumstances, the respondent – workman was entitled to be regularized at the status of workman as a regular employee. The respondent – workman not only completed 240 days without any break but he had been continuously working since February, 2005 except for one or two breaks. As per policy of the petitioner – management the employees working on muster roll or ad hoc employees are entitled to be regularized. In violation of the rules and regulations framed with regard to the service of the muster roll employee, the respondent – workman was illegally terminated from his service on

22.02.2005. The respondent – workman visited the office of the management requesting them to take him back in service but of no avail. Feeling aggrieved, the respondent – workman filed CWP No.12372 of 2005 before the High Court of Punjab & Haryana at Chandigarh. The said writ petition was disposed of vide order dated 09.08.2005 with the observations that the respondent – workman has been terminated, he may approach the Labour Court. Thereafter, the respondent workman filed a petition before the Conciliation Officer having its office at Nimri Colony, Delhi. The petitioner – management failed to appear before the Conciliation Officer as such the respondent workman was directed vide order dated 01.08.2006 to initiate proceedings against the petitioner management as such a petition under Section 10 of the Industrial Disputes Act, 1947 (hereinafter, '*the Act*') was filed by the respondent – workman. The claim of the workman was contested by the management. Vide impugned award dated 03.03.2011, the termination of workman was held to be illegal as the same tantamount to retrenchment under Section 2(oo) of the Act. The management did not comply with the provisions of Section 25(F) of the Act as neither any notice nor any notice pay in lieu thereof was given to the workman, no retrenchment compensation was paid as such the termination of services of the workman by the management was illegal. Accordingly, he was held to be entitled to reinstatement to the job with continuity of services with full back-wages. Feeling aggrieved, the instant writ petition has been filed.

3. I have heard Mr Vikram Saini, learned counsel for the petitioner management. No one appeared on behalf of the respondent – workman. However, written synopsis has been filed by counsels for both the parties and the same were perused.

4. The impugned award has been challenged primarily on the following grounds:

- (i) The respondent – workman had initially filed a writ petition before Punjab & Haryana High Court, however, the said writ petition was disposed of with the directions to approach the Labour Court. Instead of approaching the Labour Court at Punjab and Haryana, the respondent – workman filed a petition before Labour Court at Delhi which is not maintainable.

- (ii) There is no proper reference from government. The petition under Section 10 of the ID Act is not maintainable.
- (iii) The Labour Court was not justified in allowing the claim of the workman in the absence of any cogent evidence that his removal from service was in any manner contrary to the principles of law. The workman was only a muster roll employee and had not completed 240 days continuously for any calendar year and as such it cannot be said that he was retrenched unauthorizedly in violation of provisions of Section 25F of the Act and, therefore, the Labour Court was not justified in holding the termination to be illegal and allowing his reinstatement with back-wages. At the most he had a right to get the lump-sum amount of compensation.

5. In the written submissions filed by the respondent – workman it is urged that the respondent – workman was appointed as *baildar* in June – July, 1997. His services were illegally terminated in February, 2005 along with one Sahab Singh who was also employed as *baildar*. Pursuant to the directions given by Punjab & Haryana High Court, the respondent – workman filed a petition before the Conciliation Office and on his directions filed a petition before the Labour Court. Sahab Singh had also filed a similar petition before the Labour Court but he expired and the petitioners herein refused to pay the back-wages to the legal heirs of the deceased. A writ petition was filed by the petitioners being W.P.(C) No.6591/2012 before this Court which was dismissed vide order dated 17.10.2012 and thereafter the petitioners released the entire amount of back-wages to his legal heirs. In the instant case, despite directions of the Labour Court, the petitioners – management have failed to reinstate the respondent – workman and pay full back-wages as such execution proceedings are pending.

6. As regards the first submissions of learned counsel for the petitioners – management regarding maintainability of the writ petition before this Court, it is not in dispute that the respondent – workman was appointed as *baildar* by the petitioner no.1 management i.e. State of Haryana through Jr. Engineer (JE), Department of Canal, Govt. of Haryana, Near Canal Rest House, Siras Pur, Delhi – 110042. As such he was working

with the petitioner management at Delhi and was terminated by the management at Delhi only. Since the principal office of the petitioner management was at Chandigarh as such the respondent workman filed a writ petition before the Punjab & Haryana High Court being CWP No.12372 of 2005 at Chandigarh. However, since the respondent workman was terminated, he was granted liberty to approach the Labour Court. A perusal of order dated 09.08.2005 passed by Punjab & Haryana High Court reveals that there was no specific directions to the respondent workman to approach the Labour Court at Punjab and Haryana only.

7. Moreover, it is not in dispute that the respondent – workman was employed by the petitioner no.1 having its office at Delhi. He also worked at Delhi. His termination also took place at Delhi. Therefore, the entire cause of action had arisen at Delhi. The mere fact that he approached Punjab & Haryana Court since the principal office of the petitioner management was at Chandigarh and he was directed to approach the Labour Court, it cannot be said that he was estopped from approaching the Labour Court at Delhi.

8. In ***D.L.F. Universal Ltd. v. Government of National Capital Territory, Delhi***, 2002 (96) DLT 825, the order of appointment was issued from the Head Office of the petitioner at Delhi. The registered office of the petitioner was at Gurgaon. The respondent from day one had worked at Gurgaon as an Architect. The company leased accommodation was also provided to him at Gurgaon as such the situs of the employment has throughout been in Gurgaon and not at Delhi. The termination letter was also issued at Gurgaon which was the cause for the respondent – workman to raise disputes and consequently sought reference. It was held that the jurisdiction would be of the Competent Court at Gurgaon and it is for the concerned government to consider whether a reference is or is not liable to be made. While observing so, the Court referred to a Full Bench decision of Patna High Court in ***Paritosh Kumar Pal v. State of Bihar and Others***, 1984 Lab.I.C. 1254 wherein the Full Bench of Patna High Court considered in depth the issue of jurisdiction of the Tribunal and concluded that the situs of employment of the workman would determine the territorial jurisdiction in the case of industrial dispute arising from the termination of such employment. The relevant paragraphs

dealing with the issue are as under:-

*"14. Applying the above, one of the primary tests is as to where the impugned order of the termination of service of a workman in effect operates. In **Ranga Vilas Motors v Shri Ranga Vilas Motors Pvt. Ltd.** [AIR 1967 SC 1040] the Supreme Court in terms noticed that though the original order of transfer and the subsequent order of termination of the services of the workman were passed at the Krishnagiri in Kerala yet in effect it operated at Bangalore where the workman was employed. Consequently the situs of the workman's employment in the case of the termination of his service is patently a paramount factor if not being wholly conclusive. It is within the area of employment that the order of termination operates and the workman ceases to be a workman and loses his right to hold the post and received wages therefore. Therefore, on the anvil of the principle of where the impugned order operates the situs of employment of the workman is patently significant. Can it possibly be said that the order of termination of a workman does not operate within the area of his employment? The answer, therefore, has to be in favor of the Tribunal having territorial jurisdiction over the place of work or the situs of employment.*

15. Again on the second principle attached to the industrial dispute having some nexus with the territory of the State, the situs of employment of the workman assumes signal importance. Once a firm finding is arrived at that the workman was employed within a specific territory or State, the termination of his services therein has an obvious and direct nexus with such territory or such State. Consequently, on the nexus test also the situs of employment of the workman has a direct connection with the territory where such employment is terminated. To put it in the converse, where the industrial dispute pertains to the termination of the employment of a workman, can it possibly be said that the situs of such employment would not have a direct nexus with the territory and the dispute? It calls for a pointed notice that in Rangavilas Motor's case (supra), their Lordships in terms approved the High Court's view that this nexus has to be betwixt the industrial dispute and the territory of the State and not necessarily with the industry or its headquarters as such.

16. Coming now to the third principle, it appears to me that by binding precedent it is now well-established that the well-known test of jurisdiction of the Civil Courts would be equally attracted to the situation in the absence of any provision in the Act on the point. Apart from the repeated affirmance of Lalbhai Tricumlal Mill's case (AIR 1995 Bom. 463)

(supra) [which specifically held that the well-known test of jurisdiction would be applicable by the final Court in *Indian Cable Co.'s case* (1962) 1 Lab. LJ 409 (SC) (*supra*)] it was expressly observed therein as follows:

'.....The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions of proceedings.' And again:

"In our opinion, these principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act."

Now, in applying the above, one may either assume fictionally that there is no Industrial Disputes Act in force or that the workman in terms elects (where it is permissible in law) to resort to the ordinary civil remedy for the wrongful termination of his services and prefers a suit for damages therefore. Obviously, in such a situation the territorial jurisdiction would undoubtedly be of the Courts within whose territory the workman was employed and as in the present case it would be at Patna and in any case in the State of Bihar. Reference in this context may be made to Section 19 of the Civil Procedure Code which provides for the territorial jurisdiction for suits, for compensation for wrongs to persons or movables. In particular, Clause (c) of Section 20 of the Code provides that a suit shall be instituted in the Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It is axiomatic that the territory within which the services of an employee are wrongfully terminated would be the territory where the cause of action substantially arises and in a case if not wholly but a part of the cause of action so arises. On this acid test also the situs of employment of the workman would forthwith give jurisdiction to the Civil Courts and a fortiori to the Tribunals and the Labour Courts under the Act.

*17. To close this aspect it would appear that the three principles of the test indicated in *Rangavilas Motor's case* (*supra*), would all individually seem to be amply satisfied in a case of the present kind and, therefore, it appears to me that the issue is governed by way of analogy by the enunciation of the law by the final Court itself."*

9. Again in ***G.S. Batra v R.N. Mehrotra***, 2004 LLR 445, the head office of management was situated at Bangalore but the employee was posted at Delhi and the cause of action had arisen at Delhi. A Single Judge of this Court held that the Tribunal at Delhi shall have the jurisdiction because the services of the workman were terminated in Delhi and cause of action had arisen in Delhi.

10. Again in ***Braham Prakash v Govt. of NCT of Delhi***, 2007 (8) AD (Delhi) 485, situs of employment of the petitioner – workman at the time of termination of his services was at Neemrana, Rajasthan. The Labour Court relied upon the judgment of High Court rendered in ***Lohia Starlinger Limited & Anr. v Govt. of NCT of Delhi & Ors***, 2006-LLR-905 wherein the Court referred to a decision of Supreme Court in the case of ***Kusum Ingots Alloys Ltd. v Union of India*** reported as (2004) 6 SCC 254 wherein it was observed that it is a bundle of facts which, taken together with the applicable law, entitles the plaintiff to relief against the defendants and it is not every fact pleaded by a litigant that gives rise to a cause of action. Thus, only such facts which are necessary to adjudicate upon the lis would constitute cause of action conferring territorial jurisdiction upon a court. The Court, after referring to a number of judgments rendered by the Supreme Court held that the situs of the employment of the petitioner workman at the time of termination of his services was at Neemrana, Rajasthan. Thus, the subject matter of the dispute substantially arose in the State of Rajasthan as such the Courts in Delhi cannot be vested with territorial jurisdiction on the allegation that the head office of the respondent – management is in Delhi.

11. In view of the foregoing decisions, since the respondent – workman was appointed at Delhi, worked at Delhi and his termination also took place in Delhi and that being so, the Labour Court at Delhi had jurisdiction to entertain the disputes.

12. As regards the submissions of learned counsel for the petitioner – management that Section 10A of the Act was not applicable in the absence of any proper reference from the government, such a plea is not available to the petitioner as no such plea was taken by the petitioner before the Labour Court. Even in the grounds of appeal no such plea has been taken and it is only during the course of arguments that such a plea is being taken. The learned counsel for the petitioner relied upon ***Management of Power Grid Corporation of India Ltd. v Presiding Officer***, [2007 (137) DLT 419]. However, this case does not help the petitioner as it was a case where the petitioner corporation was doing the work of transmission of power, maintenance and laying of transmission lines

under the authority of Central Government. The reference, however, was made by the Government of NCT of Delhi and, therefore, the same was held to be illegal and it was observed that such a reference made by the Government of NCT did not confer any jurisdiction on the Tribunal to decide the issue.

13. Things are entirely different in the instant case inasmuch as although in the heading of the writ petition it is mentioned that it is a petition under Section 10 of the Act, however, in sum and substance, the petition challenges the termination of the respondent – workman and, therefore, as per Section 2A of the Act, the respondent – workman was competent to make an application directly to the Labour Court or Tribunal for adjudication of disputes after expiry of 45 days from the day he made the application to the Conciliation Officer of the Appropriate Government for conciliation of disputes and thereafter the Labour Court or the Tribunal have the power and jurisdiction to adjudicate upon the disputes as if it were the disputes referred to it by the Appropriate Government in accordance with the provisions of the Act. It is the case of the respondent – workman that after the writ petition was disposed of directing him to approach the Labour Court, he filed an application before the Conciliation Officer (Labour) having its office at Nimri Colony, Delhi where the management failed to appear as such vide order dated 01.08.2006, the respondent – workman was directed by the Conciliation Officer to initiate proceedings before the Labour Court and thereupon the petition was filed by him before the Labour Court. As such, this submission is devoid of any merit.

14. Coming to the last limb of arguments, it is not in dispute that the respondent – workman was working as *baildar* with the petitioner since the year 1997 and worked till his termination on 22.02.2005. Before the Labour Court, the respondent – workman filed his affidavit of evidence wherein he claimed that after being appointed in the year 1997 and during the eight years of his service, except for break in his service once or twice, he performed his duties for more than 240 days every year till his service were terminated by the management. He also claimed that his name was entered in the muster roll of each month and he placed on record the copies of the muster roll Ex.PW1/1 to Ex.PW1/6 which is prepared by the management. The management's witness – MW-1 Mr Parveen Malhotra did not dispute the fact that the name of the workman was entered in muster roll

being prepared by the management. However, the management witness deposed that the workman never worked in any calendar year for 240 days continuously. According to him, the workman was appointed from time to time intermittently for specific job as and when his services were required. However, it was rightly observed by learned Labour Court that the management was in possession of best piece of evidence i.e. muster roll prepared by the management which was withheld and therefore an adverse inference is liable to drawn against the management that the workman had been in service of the management for several years and he had completed duty for more than 240 days in the year preceding the date of his termination by the management as claimed by the workman. That being so, if the management wanted to terminate his services it was incumbent upon the management to comply with the provisions of Section 25F of the Act. It is not in dispute that the management did not comply with the provisions of Section 25F of the Act as neither any notice nor notice pay in lieu thereof was given to the workman. Under the circumstances, the termination of services of the workman tantamount to retrenchment under Section 2(oo) of the Act and the termination in the circumstances was illegal.

15. Learned counsel for the petitioner has relied a decision of this Court in ***Haryana Roadways Delhi v Rakesh Kumar and another*** [W.P.(C) No.5721/2002, decided on 17.04.2015]. However, this judgment does not help the petitioner inasmuch as in that case the evidence brought on record was not duly considered by the Labour Court and, therefore, the matter was remanded back for fresh decision. The judgment rendered in ***Municipal Corporation of Delhi v Mahesh*** [W.P.(C) No.645/2003, decided on 03.11.2006] does not help the petitioner as it was a case of regularization whereas the controversy involved in the instant case is regarding termination of the workman. The mere fact that a plea was taken before the Labour Court by the workman that he was entitled to be regularized does not *ipso facto* means that by virtue of claim petition he was seeking his regularization. In sum and substance, the workman was challenging his termination and seeking direction for reinstatement in service with back-wages. In the written submissions, the counsel for the respondent – workman had referred to W.P.(C) 6591/2012 filed by the petitioners against legal heirs of another employee Saheb Singh

challenging the award of full back-wages to the legal heirs of deceased workman. A perusal of that order goes to show that in that case also, the termination was held to be illegal and as such full wages were awarded to the legal heirs. A learned Single Judge relying upon the decision in *Jagbir Singh v Haryana State Agricultural Marketing Board and another*, [2009 (15) SCC 327] wherein it was observed and held by the Supreme Court that while granting the relief the Court has to consider the length of service, mode of employment and other relevant factors. Considering the length of service of the workman, the writ petition was dismissed. The Court also relied upon *Harjinder Singh v Punjab State Warehousing Corporation*, 2010 (3) SCC 192 wherein it was held that once the Labour Court awards reinstatement with back-wages, the High Court in its jurisdiction under Articles 226 or 277 of the Constitution of India will not interfere by substituting the same with compensation as no jurisdictional error has been committed by the Labour Court.

16. In the instant case also, since the termination of the respondent – workman was illegal, therefore, I do not find any error committed by the Labour Court in coming to the conclusion that the respondent – workman was entitled to reinstatement with full back-wages.

17. Resultantly, the petition is dismissed being devoid of merits. Pending applications, if any, stand disposed of accordingly.

Trial Court record be returned forthwith.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 02 2015/rd