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

% *Date of Decision : August 13, 2015*

+ **LPA 403/2014**

SURENDER KUMAR Appellant
Represented by: Mr.Rajiv Agarwal, Advocate
with Mr.Sachin Kumar, Adv.

versus

EAST DELHI MUNICIPAL CORPORATION Respondent
Represented by: Mr.Kumar Rajesh Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Case pleaded by the appellant before the Industrial Tribunal was that since September 01, 1998 he had worked as a muster roll beldar with the erstwhile Municipal Corporation of Delhi and that his services were illegally terminated with effect from June 15, 1999. He pleaded having worked for 240 days and since no retrenchment compensation was paid he pleaded violation of Section 25F of the Industrial Disputes Act, 1947. He pleaded that the work which he was performing as a daily wager was available and for which other persons were engaged. He also pleaded that people engaged after him as daily wagers were retained.

2. The defence pleaded was that the appellant voluntarily abandoned work with effect from February 26, 1999 and that appellant last worked on

February 25, 1999. The erstwhile Municipal Corporation of Delhi also highlighted that the conduct of the appellant in raising the issue showed the falsity of this case because he first made a representation on December 05, 2000 claiming that his services were illegally terminated in June 1999.

3. In support of its defence the management proved the muster roll record which showed that the appellant had stopped reporting for work with effect from February 26, 1999.

4. Pertaining to the appellant we need to note that when he was cross-examined, with reference to his claim that he had worked till June 15, 1999, he said that he had no proof of having received any wages in the months of March, April, May and half month of June 1999.

5. In an award dated May 16, 2005, which is not very happily worded, the reasoning of the tribunal to accept the stand taken by the erstwhile Municipal Corporation of Delhi is that the muster roll evinced that the appellant performed no work after February 26, 1999; he could give no proof of having received salary thereafter; he raising the issue for the first time in December 2010, warranted a finding to be returned that having last worked till February 25, 1999, the appellant voluntarily abandoned duties and, thus, it would not be a case of retrenchment. In a mechanical manner, after returning said finding, but in a most roundabout manner, the tribunal also held that the appellant had not worked for 240 days and hence was not entitled to any retrenchment compensation. The latter finding was unnecessary once it was held that the appellant voluntarily abandoned duties. The reason is, if it was found that the management had terminated the services of the appellant with further finding that the appellant had not worked for 240 days, the tribunal would have been obliged to decide

whether the principal of last come first go was breached and whether the work was available and after terminating the service of the appellant a fresh hand was taken.

6. Thus, the contention advanced by the learned counsel for the appellant that the Industrial Tribunal overlooked the evidence of persons who had joined after the appellant were working and that a fresh hand was taken, is noted and rejected by us as an irrelevant contention, for the reason there is ample evidence to show that the appellant voluntarily abandoned the work after having reported for duty as a daily wager for less than five months. He last worked upto February 25, 1999. His claim that his services were terminated on June 15, 1999 is false. Under the circumstances, it hardly matters whether a fresh hand was engaged after the appellant voluntarily abandoned the job.

7. The appeal is dismissed. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 13, 2015
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