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

**Date of Decision: 31<sup>st</sup> July, 2015**

+ **W.P.(C) 5210/2011**

MAHIPAL SINGH

..... Petitioner

Through: Ms.Rashmi B. Singh, Advocate

versus

NATIONAL SEEDS CORPORATION

..... Respondent

Through: Mr.Sudhir Kulshrestha, Advocate

**CORAM:**

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

### **J U D G M E N T**

**: SUNITA GUPTA, J.**

1. The question that arises for determination in this writ petition is whether on the facts and circumstances, the termination of the services of the petitioner is retrenchment in terms of Section 2(oo) of the Industrial Disputes Act, 1947(hereinafter referred to as ID Act). Further question that arises for consideration in this connection is whether Section 2(oo) (bb) of the ID Act has any application in the case?

2. The factual matrix of the case relevant for considering the questions raised may be stated thus:-

The petitioner was appointed as *Work Mistry* on 13<sup>th</sup> March, 1984 by the respondent but no appointment letter was issued to him. According to him, he worked till 30<sup>th</sup> April, 1986, i.e., for more than 2

years and hence was entitled to be treated as regular employee of the corporation from the initial date of his joining. His services were terminated on 30<sup>th</sup> April, 1986 illegally and malafidely as no termination compensation or termination notice was given to him. He raised an industrial dispute through Union and on failure of the conciliation proceedings, GNCT, Delhi referred the dispute to the Industrial Tribunal for adjudication in following terms of reference:-

“Whether the termination of services of Sh. Mahipal Singh is illegal and/or unjustified, if so, to what relief is he entitled and what directions are necessary in that respect.”

3. Petitioner filed his statement of claim and prayed for reinstatement with all service benefits such as regular pay scale, seniority back wages with interest etc. from initial date of appointment.

4. Refuting the claim of the petitioner, the respondent/management pleaded that the workman was engaged as Work Ministry for attending the civil construction work which was purely of temporary nature. It was stated that for regular appointment, there is a prescribed procedure and the workman was not appointed for any regular post. The corporation had undertaken the construction work to be done through a contractor at Bareilly/Bhopal for which the workman was engaged and after the completion of the said work, engagement of workman was discontinued from 30<sup>th</sup> April, 1986. It was also stated that no appointment letter was issued to the workman and the Work Engineer at the spot engaged the workman for a temporary work. There was no regular post of *Work Ministry*. It was also stated that the workman is not covered by the Industrial Disputes Act as he was working with the respondent who is under the control of Agricultural

Ministry. Respondent wrote a letter to the Area Manager, Bareilly that the *work mistry* would be engaged for looking after the construction site and directed the local office to follow the compulsory notification of the vacancies on casual basis for 89 days and the candidate was to be sponsored by Employment Exchange. The main object and work of respondent was to develop seeds to enhance the production in consultation with World Bank and other agriculture agencies. The service contract in this case is outside the scope of Section 25 of the ID Act. It was also stated that the service contract provided a clause that the petitioner could be removed without any reason and, therefore, the provisions of Section 25F of ID Act are not attracted in the instant case. The workman was never transferred from Bareilly to Bhopal.

5. The petitioner filed rejoinder reiterating the stand taken in the statement of claim and denied all the facts as set out in the written statement.

6. On the pleadings of the parties, following issues were framed by the Tribunal:-

- (i) Whether Delhi Administration is not the appropriate Govt. to make reference.
- (ii) Whether National Seeds Corporation is not an industry? If so, its effect?
- (iii) As per terms of reference

7. On 17<sup>th</sup> January, 1998, the Tribunal passed an Award and dismissed the claim for want of jurisdiction. Against this Award, workman preferred a Writ Petition (Civil) 3802/1998 whereby the case was remanded back to the Tribunal for decision afresh.

8. The workman examined himself in order to substantiate his case wherein he deposed that he was appointed as *Work Mistry* on 13<sup>th</sup> March, 1984 and was transferred from Delhi to Bareilly and from Bareilly to Bhopal. He further deposed that in Bhopal, his services were terminated without any notice or compensation. In cross-examination, he stated that he was issued appointment letter in which no period was mentioned. He denied that payment used to be made to him by the contractor. He admitted that there was no permanent post of *Mistry* in Bareilly and that he was appointed on temporary basis. He also admitted that other workers were also of contractor. Management did not examine any witness.

9. Vide order dated 26<sup>th</sup> November, 2010, issues No.1 & 2 were decided in favour of the workman and against the management. However, as regards issue No.3, it was held that the employment of petitioner Mahipal Singh at construction site at Bhopal was for a fixed term and he was relieved from his duty w.e.f.30<sup>th</sup> April, 1986. The same does not tantamount to retrenchment in view of Section 2(oo) of the ID Act. As such, there was no violation of Section 25F of ID Act. That being so, the termination of services of the workman is not illegal and/or unjustified. Hence he was not entitled for any relief.

10. The workman filed the present writ petition assailing the Award of the Industrial Tribunal primarily on the ground that the petitioner has continuously worked for more than 240 days and, as such, his services could not be terminated without compliance of provisions of Section 25F of the Act.

11. Since the case turns on the interpretation of Section 2(oo)(bb) of the ID Act, it will be convenient to quote the said section before proceeding to consider merits of the case:

*"2. In this Act, unless there is anything repugnant in the subject or context-*

*(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--*

*(a) voluntary retirement of the workman; or*

*(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*

*(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on this expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*

*(c) termination of the service of a workman on the ground of continued ill-health."*

12. On a plain reading of the statutory provision, it is clear that any termination of service of a workman by the employer for any reason whatsoever comes within the meaning of the expression 'retrenchment' as defined in Section 2(oo) of the Act. The section, however, provides certain exceptions to the wide and comprehensive definition of the term 'retrenchment'. The exceptions are:

*"1) Termination of appointment inflicted by way of disciplinary action*

*2) Voluntary retirement of the workman*

*3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*

*4) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employment and the workman*

*concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, or*

*5) termination of the service of a workman on the ground of continued ill-health."*

13. It follows therefore that if the case of termination of the workman comes within any of the exceptions enumerated in the section then the said termination will not be a case of 'retrenchment' within the meaning of Section 2(oo).

14. In the case of ***Uptron India Ltd. vs. Shammi Bhan and Anr.***, 1998 (6) SCC 538, considering the definition of 'retrenchment' in Section 2(oo), Supreme Court observed:

*"The definition of 'retrenchment' was introduced in the Act by Act 43 of 1953 with effect from 24.10.1953. Clause (bb) was inserted in the definition by Act, 49 of 1984 with effect from 18.8.1984.*

*The definition is conclusive in the sense that "retrenchment" has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever. If the termination was by way of punishment as a consequence of disciplinary action, it would not amount to "retrenchment". Originally, there were two other exceptions, namely,*

*(i) voluntary retirement of the workman and*

*(ii) retirement of the workman on reaching the age of superannuation if the contract of employment contained a stipulation to that effect.*

*By the Amending Act 49 of 1984, two further exceptions were introduced in the definition by inserting Clause (bb) with effect from 18.8.1984; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to Clause (bb) would also not amount to "retrenchment".*

15. The basic submission of the learned counsel for the petitioner challenging the Award is that the petitioner worked for more than 240 days in the 12 calendar months preceding the date of his termination which fact was also noted by the Tribunal and neither there was any denial by the respondent in this regard in the written statement nor any evidence was led by the respondent. Admittedly, the provisions u/s 25F of the Act were not complied with. Therefore, the termination of services of the workman was in violation of the mandatory provisions of the Act. The counsel further submits that the finding has been given by the Tribunal that the petitioner has completed 240 days preceding the date of his termination which finding has not been challenged by the Management. Therefore, the onus shifts on the management to prove that the termination of the petitioner was legal.

16. Per contra, learned counsel for the respondent submitted that there is no admission on the part of the respondent that the petitioner had rendered services in excess of 240 days in 12 calendar months preceding the date of his termination. He further submitted that the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for him to adduce evidence apart from examining himself to prove the factum of being in employment of the employer as held in *Ranip Nagar Palika v. Babuji Gabhaji Thakore & Ors.*, (2007) 13 SCC 343.

17. He further submitted that the appointment of the petitioner was for a fixed period and for specified work which is covered by Section 2(o) (bb) of the ID Act, hence, if after the specified work was over and he was terminated, such termination is not illegal.

18. Reliance was placed on the following cases:-

- (i) ***State of Rajasthan & Ors v. Rameshwar Lal Gahlot***, AIR 1996 SC 1001
- (ii) ***M/s. Haryana State FCCW Store Ltd. & Ors. v. Ram Niwas and Anr.***, AIR 2002 SC 2495
- (iii) ***Batala Cooperative Sugar Mills Ltd. V. Sowaran Singh***, AIR 2006 SC 56
- (iv) ***Secretary, State of Karnataka & Ors. v. Umadevi & Ors.***, (2006) 4 SCC 1
- (v) ***Punjab State Electricity Board & Ors. v. Sudesh Kumar Puri***, (2007) 2 SCC 428
- (vi) ***M.D. Karnataka Handloom Dev. Corpn. Ltd. V. Mahadeva Laxman Raval***, AIR 2007 SCC 631

19. The Industrial Tribunal relying on the oral and documentary evidence held that engagement/appointment of the workman was for a specific purpose and for a particular period and since the purpose of engagement/appointment was over and the period of appointment had expired, his dis-engagement was in terms of the contract of service and, therefore, not a retrenchment within the meaning of Section 2(oo) of the Act. Although no evidence has been led by the respondent/management yet it is the case of the management that the main object and work of the respondent is to develop seeds to enhance the production in consultation with World Bank and other agriculture agencies. The petitioner was engaged as *Work Mistry* for attending the civil construction work which was purely of temporary nature and he was aware of the fact that his engagement will be over the moment the work will be over. He was not appointed for any regular post. In regard to regular appointment, there is a prescribed

procedure and powers have been delegated by the Director to the Regional Manager/General Manager (Appointment) and Managing Director for different grades of post. The corporation had undertaken the construction work at Bareilly which was to be done through a contractor who was entrusted with the job after following the prescribed procedure. The Junior Engineer (Civil) was posted at construction site, Bareilly to supervise the construction. The concerned junior engineer was permitted to engage a person for attending to the work of *Work Mistry* on casual basis. Accordingly, Sh. Mahipal was engaged. Later on when the work at Bareilly was over, he was engaged in Bhopal to assist the Junior Engineer (Civil) for attending to the construction there. He was duly informed that the nature of work was purely temporary and his engagement would come to an end after the construction work is completed. The petitioner himself has placed on record “the terms and conditions of appointment to be offered to the selected candidates for the post of Work Mistry” which is dated 21.04.1986 and reads as under:-

- (i) Your appointment, is for a fixed terms and shall come to an end after the termination of the construction work.
- (ii) During the period of appointment you will be paid @ Rs.15/- per day.
- (iii) You shall faithfully obey the orders communicated to you by the officer under whom you are deputed to work from time to time and you shall discharge your duties efficiently.
- (iv) Your appointment will be subject to such orders as may be passed from time to time by the undersigned or by any other superior authority.

- (v) Your appointment can be terminated without giving any notice if in the opinion of the undersigned or any other superior authority, your work or conduct is not satisfactory.
- (vi) You are required to sign the duplicate copy of this order in token of accepting the appointment on these terms and conditions and upon you signing the same this condition shall be deemed to be contract of service.
- (vii) At present you are posted at Govindpura.

After the construction work at Bhopal was completed, he was relieved from his duties w.e.f. 30<sup>th</sup> April, 1986.

20. In ***Rameshwar Lal Gahlot*** (supra), the workman was appointed for a period of three months or till the regularly selected candidate assumes office. He was appointed on 28<sup>th</sup> January, 1988 and his appointment came to be terminated on 19<sup>th</sup> November, 1988. When the writ petition was filed, the learned Single Judge held that since he had completed more than 240 days, the termination is in violation of Section 25F of the Act and directed to make fresh appointment of the respondent. Appeal was filed against the latter part of the order. The Division Bench set aside the later part of the order and directed reinstatement with back wages. SLP was preferred. It was observed that the controversy stands concluded by a judgment reported in ***M. Venugopal vs. Divisional Manager***, LIC, (1994) 2 SCC 323 where the Court held that once an appointment is for a fixed period, Section 25 does not apply as it is covered by Clause (bb) of Section 2 (oo) of the Act. The appeal was allowed observing that the termination is in terms of letter of appointment, therefore, neither reinstatement nor fresh appointment could be made.

21. Again in *M/s. Haryana State FCCW Store Ltd. and Anr.*(supra), Watchman was appointed to guard stock of grain stored in open area of Mandi. Employer order sanctioning his engagement stated that engagement was for specific purpose and for particular period. Termination of service of watchman after purpose and period of engagement was over was held not to be 'retrenchment' and, therefore, question of compliance with Section 25F does not arise.

22. In *Batala Co-operative Sugar Mills Ltd.* (supra), the evidence showed that workman was engaged for specific period and specific work and if after the specific work, the services are terminated, it is not a case of retrenchment. It was also held that the onus of proving the fact that the workman worked for 240 days in 12 calendar months is upon the workman. Direction to reinstate the employee on the ground of violation of Section 25F was set aside.

23. Again in *M.D., Karnataka Handloom Dev. Corpn, Ltd.*(supra), the workman was appointed for a fixed period and for a particular scheme. After the scheme came to an end, the services of the workman were terminated. It was observed that even assuming that the respondent had worked 240 days continuously, he cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract does not amount to retrenchment and, therefore, it does not attract compliance of Section 25F of ID Act at all. Reliance was placed on an earlier decision rendered in *Secretary, State of Karnataka & Ors. vs.*

***Umadevi and Ors.***(supra) where it was observed as follows:-

*“45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.*

*47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in*

*nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."*

24. In ***Punjab State Electricity Board v. Darbara Singh***, (2006) 1 SCC 121, Board had appointed respondent as daily wager peon for a period of about two months with clear understanding that as and when regular employee joins, his services would be terminated. His period of appointment was extended from time to time and his services were terminated on appointment of regular peon. Supreme Court observed that it was a case covered under Section 2(oo)(bb) of the Industrial Disputes Act, despite the fact that his appointment was extended from time to time. In ***Kishore Chandra Samal v. Orissa State Development Corporation***, (2006) 1 SCC 253, the workman was appointed as junior typist with effect from 12.7.1982 and he continued in the said post for more than one year and then another order was issued appointing him for 44 days with effect from 1.10.1983. On its expiry on 15.11.1983, another appointment was issued for a fixed period and in this way, he was allowed to work up to 3.5.1989 and thereafter his contract was not renewed. The Supreme Court upheld the order of High Court holding that it was a case covered under Section 2(oo)(bb) of Industrial Disputes Act. In ***Municipal Council v. Raju***, 2006 SCC 473, respondent was appointed as a typist on contract basis at Octroi Branch where permanent employees had gone on leave. The respondent gave an

affidavit that his services may be dispensed with by the Municipal Council at any time. The respondent worked from 24.6.1994 to 2.3.1996 and 7.3.1997 to 21.5.1997 with the Corporation and thereafter his services were dispensed with. The question arose whether Section 2(oo)(bb) of the Industrial Disputes Act was applicable or not. Supreme Court observed that Section 2(oo)(bb) of ID Act was applicable even in such cases where the employment is taken by a person for a short limited period knowing fully well that he is liable to be terminated at any time.

25. In view of the aforesaid decisions, firstly there is no categorical finding given by the Industrial Tribunal that the workman worked for more than 240 days in 12 calendar months preceding the date of his termination. Even if it is taken that he worked for more than 240 days, in view of the terms and conditions of his appointment, which specified that his appointment was for a fixed term and will come to an end after completion of the construction work, therefore, the petitioner cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act.

26. Under the circumstances, the view taken by the Industrial Tribunal does not suffer from any perversity or illegality which calls for interference. The writ petition is accordingly dismissed.

**(SUNITA GUPTA)**  
**JUDGE**

**JULY 31, 2015**  
**rs**