

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8297/2007 and CM No.15684/2007 (stay)**

% Judgment reserved on 08.04.2015
Judgement pronounced on: 21.04.2015

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner

Through: Mrs Rachana Joshi Issar and
Ms Ambreen Rasool, Advs.

versus

SUBHASH VAID @ SUBHASH Respondent
Through: Mr N.L. Bareja, Advocate

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The petitioner has assailed the award dated 06.08.2007, whereby the Central Government Industrial Tribunal (CGIT) in ID No. 84/2003 had ordered to reinstate the respondent Subhash with effect from the date of his termination from the service along with 15% back wages and also ordered the petitioner to confer temporary status and absorb the respondent as per the scheme within two months from the date of the publication of the award.
2. The award has been assailed on the grounds that the learned Tribunal had exceeded its jurisdiction and the award is based on surmises and conjectures. The Tribunal has also not considered the facts of the case in its

true perspective. That, since the Tribunal had decided two Industrial Disputes being ID Nos. 84/2003 and 14/2003 together by one award, he got the facts of both the cases mixed up and thus had reached to a wrong conclusion. It is submitted that it was not the case of the respondent-workman that his services were terminated by the petitioner at any stage before the CGIT, yet the CGIT had ordered the reinstatement of the workman-respondent with 15% back wages. It is further submitted that the CGIT has also failed to appreciate the fact that the workman-respondent was not covered under the Scheme effective from 01.10.1989 as it was applicable to the existing employees of petitioner on 01.10.1989 and was not applicable to the employees who had subsequently joined the Management and that as per the case of the workman-respondent himself he, for the first time, had joined the Management on 23.10.1992. It is further submitted that the learned Tribunal has also erred giving relief to respondent under the agreement dated 03.02.1999, which, in fact, was not binding on the parties and that the case of the respondent was not covered under the said agreement which was not even produced before the Tribunal. It is submitted that the award of the CGIT thus suffers from illegality which is apparent on the face of it and the same is liable to be set aside.

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3. The workman-respondent in its counter-affidavit has stated that the CGIT had acted fairly and the findings are based on the documents on record and the CGIT has rightly held that the respondent-workman was entitled for the regularization against the regular post in view of the Scheme which was made effective from 01.10.1989 and also the agreement arrived at between the Management and four Federations of the employee on 16.11.1998. It is submitted that the petition is liable to be dismissed.

4. The parties have submitted their brief synopsis. The respondent has relied upon Divisional Manager, New Delhi Assurance Company Ltd. vs. A Sankara Ligim (2008) 10 SCC 698, Harjinder Singh vs. Punjab State Warehousing Corporation AIR 2010 SC 1116, Divender Singh vs. Municipal Council, Sanaur AIR 2011 SC 2532.

5. I have heard the arguments of the learned counsel for the parties. My findings are as under:-

6. Admittedly, the terms of reference does not relate to the termination of the services of the respondent/workman. The terms of Reference before the Tribunal was as under:-

“Whether the action of the management of MTNL is not granting temporary status/regularising the services of Shri Subhash, Part-time workman was

justified? It not, to what relief the workman is entitled to?"

7. In the statement of claim and the rejoinder filed by the respondent-workman before CGIT, there was no pleading and contention that the services of the workman were terminated by the petitioner. It is also apparent that before the matter was referred for adjudication by the Competent Authority, there were two rounds of litigation between the parties. In the first round of litigation, the respondent-workman along with other employees, whose services were allegedly terminated, filed an application in the year 1997 before Central Administrative Tribunal being OA No.1506/1997. The said OA was dismissed on the ground of jurisdiction and an opportunity was given to all the applicants to approach the appropriate forum. Thereafter, in the second round of litigation, the respondent-workman along with four other persons whose services were allegedly terminated filed a civil writ petition before this Court being CWP No.714/1999. The said writ petition was dismissed on 22.02.2001 on the ground that the petition had disputed questions of facts which were required to be settled by trial. The writ petition was dismissed as withdrawn with liberty to pursue the remedy in accordance with law. It was, thereafter that the workman-respondent raised a dispute before the appropriate Government

which was subsequently referred to the Court of CGIT-cum-Labour Court-II. It is apparent that in none of the above said cases filed by the respondent-workman, he had claimed the termination of his services by the petitioner. His stand all through had been that he continued in the services of the petitioner yet the CGIT had ordered for the reinstatement of the workman-respondent with 15% of back wages. The CGIT had vide impugned award, disposed of two industrial disputes and had mixed up the facts of both the cases. The award shows that in the other industrial dispute relating to Sushila the reference was relating to the alleged termination of her services. This part of the finding of the CGIT thus is contrary to the facts and contentions of parties. In his application under Section 17B of the Industrial Disputes Act, the respondent himself stated that on superannuation of Sarup Singh on 31.05.2010 with whom the respondent-workman was in part-time employment, the respondent-workman continued to remain unemployed with effect from 31.05.2010. The award, therefore, apparently suffers with patent illegality qua the workman Subhash Vaid and thus is liable to be set aside on this count alone.

8. The issue before CGIT qua Subhash Vaid was whether he was entitled for temporary status/regularization of services. The claim of

Subhash Vaid respondent had been that he had been in service of the petitioner as part-time worker with effect from 23.10.1992 and was entitled for regularization and/or of temporary status under the Scheme dated 01.10.1989. While the case of Shri Subhash Vaid is that he had been in service of petitioner since 23.10.1992, the petitioner had disputed this fact. However, even for the sake of arguments, if we presume that Mr Subhash Vaid joined the service with petitioner on 23.10.1992, the question still is if he was covered by the Scheme. The Scheme has been proved on record of the Tribunal and is placed therein at page B-73 and the relevant portions are reproduced as under:-

“Casual Labourers (Grant of Temporary Status and Regularization Scheme)

1. This Scheme shall be called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989;
2. This Scheme will come into force with effect from 1.10.1989 onwards;
3. This Scheme is applicable to the Casual Labourers employed by the Department of Telecommunications.

Provisions

4. The provisions in the Scheme would be as under:-

A. Vacancies in the Group 'D' Cadres in various officers of the Department of Telecommunications would be exclusive filled by regularization of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules;

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(B) Till regular Group 'D' vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a Temporary Status, as per the details given below.

5. Temporary Status

(I) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of officers observing five-day week). Such casual labourers will be designated as Temporary

Mazdoor.

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No change of duties

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/territorial circles on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts."

9. There is no dispute to the fact that this Scheme was effective from 01.10.1989. The Scheme itself shows that it was applicable only on the "existing casual labourers". Admittedly, the respondent was not born in the cadre of the petitioner on 01.10.1989, so, he does not fall in the category of "all the existing casual labourers". The Scheme apparently, as is clear from the categorical and unambiguous terms used in the scheme, was applicable only on the existing casual labourers "till the absorption of all existing casual labourers". It is not the case of Shri Subhash Vaid, the workman that

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all the existing casual workers working with the petitioner on 01.10.1989, stood regularized. The Scheme further shows that temporary status was to be given to those casual workers who were “currently” employed and fulfil the other conditions of Scheme. The use of words “existing” and “currently” ‘employed’ clearly shows that the intention behind formulating the scheme was to grant temporary status and regularized the existing casual labourers. Since the respondent-workman was not covered under the scheme, he was not entitled to regularization or of temporary status under the said Scheme.

10. It is argued by the petitioner that the respondent has also placed its claim on a letter dated 03.02.1999, which is reproduced as under:-

“No.MTNL/IRW/21(12)-VII/121
February 3, 1999

To

Shri Sarup Singh
General Secretary,
MTNL, Staff Union (Regd.),
A-207, Pandara Road
New Delhi-110 003

Sub: Charter of Demands-Notice for Trade Union
Act

Please refer to your letter No.MTNL-
SU/Notice/99 dated 25.1.99 and reminder dated
28.1.99 on the above subject.

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2. XXX XXX XXX

3. XXX XXX XXX

4. **REGULARIZATION OF DRM'S**

In terms of the Agreement made with the four Federations on 16th November, 98, it was agreed that the existing Casual Labourers will be absorbed in MTNL on 'as is where is basis'. Subsequent to the above, instructions have been issued to both the CGMs to regularize Casual Labourers/DRMs/Temporary Status Mazdoor within a period of 15 days. A feedback on the same will be obtained shortly."

and argued that under this agreement, he was entitled to be absorbed on 'as is where is basis' and then regularized. It is argued on behalf of the petitioner that the respondent-workman is not covered under this agreement. It is submitted that it is not a document, but only a letter written by some Officer on Special Duty of the petitioner. It is further submitted that the alleged agreement dated 16.11.1998 between the Union and the four Federations of the petitioner have not been proved on record, so, it cannot be said whether that agreement has any relevancy and gives any right to the

respondent-workman. It is argued on behalf of the respondent/workman that this document is relevant document of petitioner and confers right upon him and cannot be ignored. There is no dispute to the fact that agreement dated 16.11.1998, find mention in this letter, has not been produced on record before CGIT by workman, nor he had sought any directions from CGIT asking the petitioner to produce the said agreement. Hence, the agreement, which is basis of this letter which seem to have apparently been written with intention to desist the workers to go on strike, has not been produced on record. It is thus apparent that the agreement dated 16.11.1998 between the Union and the four Federations was not before the CGIT. This letter deals with the question of 'absorption' of casual labourers in MTNL on "as is where is basis". The workman/respondent needed to show that pursuant to that agreement, he ought to have been regularized. This letter is simply a letter, does not, in any way, specify if Subhash, the workman is covered under the said agreement dated 16.11.1998. This letter does not speak of stakeholders under the said agreement. It also does not qualify the 'existing casual labourers' agreed to be absorbed on "as is where is basis". The workman Subhash had an opportunity before CGIT to prove that document, by summoning it, either from the office of MTNL or Staff Union office of

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Union office or from office or four federations, who were party to the said agreement or simply taking help from Court seeking directions to Management to produce the same. But the workman did not opt for either of the options and did not produce the agreement dated 16.11.1998 between Management and four Federations. The rule of law is very clear. Burden of proof lies on the person to prove a document, who claims a benefit under the said document. Reliance by the CGIT upon a letter dated 03.02.1999 which only contains the commitments to do certain acts pursuant to an agreement, dated 16.11.1998, without examining the agreement dated 16.11.1998 and verifying if the workman Subhash was covered under the said agreement and so entitled for the relief, granting relief solely on the basis of a letter written which is nothing but an information sent via this letter dated 03.02.1999, that instructions have been issued to both CGMs to regularize casual workers etc. within 15 days. It was not the case of workman that he was covered under those instructions. No copy of any such instructions issued prior to letter dated 03.02.1999 was also placed before CGIT to judge if the respondent/workman was covered under it. Thus, it is a case where there was no evidence before the CGIT that workman/respondent under a Scheme was entitled for regularization or grant of temporary status.

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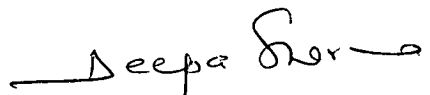
11. I have also given due considerations to the judgments relied upon by the respondent, i.e., Divisional Manager, New Delhi Assurance Company Ltd. (*supra*), Harjinder Singh (*supra*), Divender Singh (*supra*). These cases relate to retrenchment and the retrenchment of Shri Subhash is not an issue in the present case.

12. The award is perverse and suffers with patent illegality. It deals with facts which were not even contended before the CGIT, when it ordered for reinstatement of workman-respondent with 15% of back wages.

13. In view of the above, the writ petition is allowed and the award is set aside. The petition stands disposed of with no order as to costs.

CM No. 15684/2007 also stands disposed of.

APRIL St 21, 2015
BG


DEEPA SHARMA
(JUDGE)