

\$~51

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

+ **W.P.(C) 6569/2016**

JASBIR SINGH

..... Petitioner

Through: Ms. Meenakshi Sood, Ms. Neelam
Tiwari and Mr. Sachin Kumar, Advs.

versus

M/S BSES RAJDHANI POWER LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

29.07.2016

1. The challenge in this Petition is to the award dated 18th February, 2014 by the petitioner herein.

2. Jasbir Singh along with one Sunil Kumar has raised an industrial dispute which was referred by the appropriate Government to the Industrial Adjudicator on the following terms:

“Whether the services of Sh. Sunil Kumar, S/o, Sh. Krishan Lal and Jasbir Singh have been illegally and or unjustifiably terminated by the Management and if yes to what relief is he entitled and what directions are necessary in this respect.”

3. As noted above, this petition has been filed by Jasbir Singh. The case of the petitioner before the Industrial Adjudicator was that petitioner joined the respondent as ‘Meter Reader’ on 15th May, 1997 at Road No. 43, Punjabi

Bagh and continued to work till 30th September, 2003 when the services of the petitioner were illegally terminated. It was his case that he was performing regular nature of job and as such he should be treated as regular and permanent employee and entitled to be paid salary and proper pay scale and allowances at par with his counter-parts on the principle of equal pay for equal work, but the Management did not take any steps, which amounts to unfair labour practice. He alleged discrimination as his juniors have been retained in service and regularized in proper pay scale and allowances but he has been thrown out of the job in violation of Section 25 (F) (G) and (H) of the Industrial Disputes Act, 1947. The demand notice was sent on 19th May, 2007, but no reply was received.

4. Respondent's case was, the claim of the petitioner is not maintainable on the ground of delay and laches as the claim was filed before the Conciliation Officer after a period of around 4 years. It was the stand of the respondent that petitioner was appointed on a contractual basis for a particular type of work by the erstwhile DVB and on the completion of the work, he stopped coming to duties on his own. Further it was stated that the case comes under the sub-heading 2(oo)(bb) of the Industrial Disputes Act wherein it has been clearly stated that the retrenchment does not include

termination of services of the petitioner as a result of non renewal of contract of an employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf therein.

5. On merit it was the respondent's case that the petitioner was engaged to work as meter reader by erstwhile DVB by the Punjabi Bagh Division purely on contract basis for taking meter reading @ Rs.1 per meter and he worked w.e.f. the dates mentioned respectively and his services were not on continuous basis as there were some breaks. As per the work order, petitioner was deputed till 30th September, 2003. It is also the respondent's stand that the post of ALM is required to be filled strictly in accordance with the notified R & P Regulations. It is a direct recruitment post which should have been filled after making a reference to the employment exchange. The workman was a daily rated employee and was paid wages as fixed at the time of initial employment and revised from time to time under the Minimum Wages Act by the appropriate Government. On completion of pleadings two issues were framed:

- 1. Whether workmen was engaged on contractual basis on account of exigencies of work and for a particular period and if so, to what effect? OPM*
- 2. relief.*

6. On issue no.1 the conclusion of the Industrial Adjudicator was that the petitioner was employed by the respondent on contract for a fixed period of six months which was up to 30th September, 2003. He also concluded since no documents have been filed by the petitioner, that his contract was extended beyond 30th September, 2003, nor the petitioner has claimed so, therefore his contract of job expired on 30th September, 2003. The Industrial Adjudicator relied upon Section 2 (oo) (bb) of the Industrial Disputes Act, 1947, by holding discharge from service of workman after expiry of term of contract would not be a retrenchment. He relied upon the judgment of the Supreme Court in the case of *Punjab State Electricity Board and Anr. V. Sudesh Kumar Puri*, AIR 2007 SC (Supp.) 647. The Industrial Adjudicator dismissed the Claim Petition.

7. Learned counsel for the petitioner would submit that the Industrial Adjudicator did not appreciate that the nature of the duties performed by the petitioner were of perennial nature. According to her, the Industrial Adjudicator should have gone into the said aspect and decided the Claim Petition in favour of the petitioner. She would state that the Judgment relied upon by the Industrial Adjudicator in the case of *Punjab State Electricity Board and Anr. (supra)* is not applicable to the facts of this case.

8. Having heard the learned counsel for the petitioner and perused the record, there is no dispute to the fact that after 30th September, 2003, the appointment of the petitioner on contract basis was not extended. As per the document at page 61, which is an appointment letter, it is noted that the petitioner was appointed for a period of six months. It is conceded that six months had expired on 30th September, 2003. In the absence of further appointment letter beyond that period, it must be held that the appointment of the petitioner has come to an end on 30th September, 2003 by efflux of time and is not a retrenchment in view of the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, and the rigors of Section 25 (F) shall not be applicable. The Industrial Adjudicator was right in relying on the said provision. He has also rightly relied upon the judgment of the Supreme Court in ***Punjab State Electricity Board and Anr.*** (*supra*) which Judgment is also relatable to the 'Meter Readers' and the Supreme Court held the engagement of the respondent was for a specific period and conditional engagement. The contract was clearly governed by the terms of the engagement. The Supreme Court set aside the order of the High Court and Labour Court by holding, the orders are clearly unsustainable. The plea that the duties being performed by the petitioner were of perennial nature, is

also liable to be rejected in view of the terms of the appointment, which resulted in the appointment coming to an end by efflux of time.

9. In view of my above discussion, I do not see any merit in the Petition. Same is dismissed.

V. KAMESWAR RAO, J

JULY 29, 2016

jpg