

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

Date of Decision: April 21, 2017

+ **W.P. (C) 2320/2004**

UNIVERSITY OF DELHIPetitioner
Through: Mr. Mohinder JS. Rupal and Ms.
Disha Malhotra, Advocates

versus

GOVT. OF NCT OF DELHI & ANR.Respondents
Through: Mr.Sudhir Nagar, *Amicus Curiae*
for respondent No.2-Vinod Kumar

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Vide Award of 22nd July, 2003, petitioner-Management has been directed to reinstate respondent/workman-Vinod Kumar on daily wages and to pay him 25% of his back wages at the rate of his last drawn wages from 20th August, 2000 till the date of his reinstatement in service.

The factual details as noted in the opening paragraph of impugned Award need no reproduction. Suffice to note that claim of respondent-workman was that he had worked for more than 240 days, whereas petitioner-Management's stand is that he had not worked continuously for a period of 240 days. Pertinently, trial court in impugned Award has concluded that respondent-workman was not found suitable for regular

employment for the post of Library Attendant. While relying upon evidence of respondent-workman and the evidence of Management's witness i.e. Assistant Librarian, impugned Award has been rendered.

The finding returned in impugned Award regarding respondent-workman having worked for more than 240 days is reproduced as under: -

“The management in its written statement admitted that the workman have been in service of the management from 13.05.1991 to 30.06.1992 and again from 08.12.1992 to 05.06.1993. Thus, the management had admitted averments of the workman regarding length of service. WW1 also proved his experience certificate dated 02.07.1992 as Ex.WW1/1 and another experience certificate dated 10.09.1993 as Ex.WW1/2. Ex.WW1/1 contained that the workman had been in service of the management as a Matriculate worker on daily wages basis from 13.05.1991 to 30.06.1992 with one day break after six months. Ex.WW1/2 contained that he had also been in service of the management from 07.12.1992 to 05.06.1993. The day of artificial break if any has to be ignored in view of principles of law laid down in case of Management of municipal Corporation of Delhi Verses Prem Chand Gupta and another, 2001 LLR 1034. MW1 and WW1 in their respective affidavit did not contradict any averments regarding length of service. Therefore, it stands proved on record that the workman had been in continuous service with the management for a period of more than 240 days.”

As per order of 4th October, 2016, contesting respondent No.2- Vinod Kumar, who had appeared in person, was duly represented by Mr. B.K. Pal, Advocate. Thereafter, none has been appearing on behalf of

contesting respondent No.2 on the last half a dozen dates of hearing. Vide order of 17th April, 2017, it was directed that counsel for the parties be telephonically informed about the pendency of this petition. On last date of hearing, office reported that both the numbers of counsel for contesting respondent No.2 (i.e. 011-22581837, 9811904801) were not responding. On the last date of hearing, learned counsel for petitioner had submitted that he had tried to inform Mr. B.K. Pal, Advocate, telephonically on both these numbers about the pendency of this petition, but there was no response.

Since the issue involved in this petition is identical to that of W.P.(C) 2331/2004, therefore, vide last order, learned counsel for respondent-workman appearing in W.P.(C) 2331/2004 was called upon to assist the Court in this petition as *Amicus Curiae*. Copy of the paper-book was supplied to him and the matter was posted for today for remaining adjournments.

Learned counsel for petitioner-Management assails impugned Award on the ground that a workman is required to work continuously for more than 240 days to continue to work as daily wager and to submit so, reliance is placed upon Supreme Court's decision in *Mohan Lal v. Management of M/s. Bharat Electronics Ltd*, AIR 1981 SC 1253. Thus, it is submitted that petitioner's admission regarding respondent-workman having worked intermittently for more than 240 days would not justify continuance of respondent-workman as daily wager.

On the other hand, learned counsel for respondent/workman-Vinod Kumar supports impugned Award and submits that he had completed 240

days of continuous employment prior to termination of his service on 5th June, 1993 and so, this petition deserves to be dismissed. Nothing else is urged on behalf of either side.

After having heard learned counsel for parties and on perusal of impugned Award, evidence on record and the decision cited, I find that respondent/workman-*Vinod Kumar* had completed 205 days in the year preceding termination of his service on 5th June, 1993. So, in view of Supreme Court's decision in *Mohan Lal (supra)*, which has been followed by a co-ordinate Bench of this Court in *Megh Raj Singh & Ors. V. ITDC Ltd. and Anr*, 2012 SCC OnLine Del 4584, I find that respondent/workman-*Vinod Kumar* is not entitled to reinstatement with back-wages. Accordingly, impugned Award is set aside and this petition is allowed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 21, 2017

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