

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

Date of Decision: April 21, 2017

+ **W.P. (C) 2330/2004**

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-*Devender*
Sharma

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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Vide Award of 23rd July, 2003, petitioner-Management has been directed to reinstate respondent/workman-*Devender Sharma* 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 03.09.1991 to 06.12.1992; 16.03.1993 to 30.08.1993; and again from 20.10.1993 to 20.04.1994. MW1 also admitted this fact in his statement. Thus, the management had admitted averments of the workman regarding length of service. WW1 also proved his experience certificate dated 20.04.1994 as Ex.WW1/7; dated 02.07.1995 as Ex.WW1/6; dated 03.09.1993 as Ex.WW1/8 and another experience certificate dated 16.04.1994 as Ex.WW1/9. Ex.WW1/9 contained that the workman had been in service of the management from 03.09.1991 to 06.12.1992. Experience certificate Ex.WW1/8 contained that the workman had been in service of the management from on daily wages basis from 16.03.1993 to 30.08.1993. Ex.WW1/7 contained that he had also been in service of the management from 21.10.1993 to 20.04.1994. WW1 in his cross-examination stated that he had not been in continuous service with the management for a period of 240 in calendar years 1991 and 1992 to 1994. This stands falsified by the pleadings and evidence of the management when the management and MW1 that the workman had been in service from 03.09.1991 to 06.12.1992 admitted it. 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 19th August 2008, learned counsel for contesting respondent No.2-*Devender Sharma* was duly represented by Mr. Vidhu Upadhaya, Advocate. Thereafter, on more than half a dozen dates of hearing, none has appeared on behalf of contesting respondent No.2.

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 arguments.

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-*Devender Sharma* supports impugned Award and submits that he had completed 240 days of continuous employment prior to termination of his service on 20th April, 1994 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 had worked for more than 240 days in the year preceding his termination of service on 20th April, 1994. Considering the fact that respondent-workman-*Devender Sharma* was not found fit for regular employment, the relief granted to him of reinstatement is modified to the extent that he would be entitled to the compensation in lieu of his reinstatement, which is quantified at ₹50,000/- to be paid by petitioner to respondent/workman-*Devender Sharma* within eight weeks from today. This Court finds that in order of 19th August, 2008 (*inadvertently placed on record in W.P. (C) 2331/2004*), respondent-workman-*Devender Sharma* was not found entitled to any relief under Section 17B of *the Industrial Disputes Act, 1947* for the reason that he has concealed the fact that he was working in S.D. Senior Secondary School, East Punjabi Bagh, New Delhi for the last 14 years i.e. since termination of his service by petitioner herein and so grant of 25% back wages is declined to respondent-workman.

Impugned Award stands accordingly modified and this petition stands disposed of.

Copy of this order be given *dasti* to learned counsel for petitioner to ensure compliance of this judgment.

(SUNIL GAUR)
JUDGE

APRIL 21, 2017

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