

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

Date of Decision: April 21, 2017

+ **W.P.(C) 2331/2004 & C.M.2156/2004**

UNIVERSITY OF DELHI Appellant
Through: Mr. Mohinder JS. Rupal and Ms.
Disha Malhotra, Advocates
versus

GOVT. OF NCT OF DELHI & ANR.Respondents
Through: Mr. Sudhir Nagar and Mr. Vijay
Kasana, Advocates for respondent
No.2-*Sunita Devi*

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 on daily wages and to pay her 25% of her back wages at the rate of her last drawn wages from 20th August, 2000 till the date of her 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 she had worked for more than 240 days, whereas petitioner-Management's stand is that she 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 01.08.1991 to 30.04.1992 and again from 20.07.1992 to 19.01.1993. Thus, the management had admitted averments of the workman regarding length of service. WW1 also proved her experience certificate dated 20.01.1993 as Ex.WW1/1 and another experience certificate dated 02.01.1997 as Ex.WW1/2. Ex.WW1/1 contained that the workman had been in service of the management on daily wages basis from 01.08.1991 to 30.04.1992 and again on 20.07.1992 to 19.01.1993. Ex.WW1/2 contained that he had also been in service of the management from 11.09.1996 to 31.12.1996. 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.”

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-*Sunita Devi* supports impugned Award and submits that she had completed 240 days of continuous employment prior to termination of her service on 19th January, 1993 and so, this petition deserves to be dismissed. To submit so, attention of this Court is drawn to Experience Certificate of 20th January, 1993 (Ex.WW1/1).

In rebuttal, learned counsel for petitioner draws the attention of this Court to respondent/workman-*Sunita Devi*'s Experience Certificate of 2nd January, 1997 (Ex.WW1/2) to point out that she had worked from 11th September, 1996 to 31st December, 1996. Attention of this Court is also drawn by learned counsel for petitioner to evidence of respondent-workman (WW-1) to point out that she has admitted in her cross-examination that she had worked with petitioner-Management upto 31st December, 1996. It is also pointed out by petitioner's counsel that respondent/workman-*Sunita Devi* had kept silent from the year 1993 to 1996 and only in the year 2001, she had sought Reference and so, in such a situation, her reinstatement with back wages is totally unjustified. 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 as per the Experience Certificate of 20th January, 1993 (Ex.WW1/1), she had worked for more than 240 days preceding termination of her service and that her subsequent temporary employment for three months by another department in September, 1996 would not justify her claim of

retrenchment. Respondent/workman-*Sunita Devi*'s silence for three years i.e. from 1993 to 1996 and till 2001 does justify the denial of back wages to her, and also her reinstatement as she was not found fit for regular employment.

In view of aforesaid, impugned Award is modified to the extent that in lieu of reinstatement, compensation of ₹50,000/- be paid by petitioner to respondent/workman-*Sunita Devi* within eight weeks from today. In view of delay and laches on the part of respondent/workman-*Sunita Devi*, the back wages are denied to her. Impugned Award is accordingly modified.

With aforesaid directions, this petition and the application are disposed of while leaving the parties to bear their own costs.

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

(SUNIL GAUR)
JUDGE

APRIL 21, 2017

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