

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

Date of Decision: May 04, 2017

+ **W.P.(C) 19992/2005 & C.M. 17949/2014**

MAHANAGAR TELEPHONE NIGAM LIMITED Petitioner

Through: Ms. Rachana Joshi Issar, Ms.
Srujana Suman Mund, Ms.
Vandana Kishra, Mr. Syed Asif
Iqbal and Ms. K. Vaijyanthi,
Advocates

Versus

SHIV DUTT

..... Respondent

Through: Mr. Rajiv Aggarwal and Ms.
Neelam Tiwari, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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1. Impugned Award of 30th January, 2004 directs reinstatement of respondent-workman with 25% back wages w.e.f. 10th January, 1991. The facts as noted in impugned Award need no reproduction. Suffice to note that Reference made to Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (*hereinafter referred to as the "Tribunal"*) was as to whether action of petitioner-Management in terminating the service of respondent-workman w.e.f. 22nd December, 1987 was justified? After recording of evidence of petitioner's Assistant Engineer-*Mr. N.L. Arora (MW-1)* and respondent's evidence, it has been held by

the Tribunal that although every year respondent-workman had been absent for varying periods, but petitioner-Management has not taken any action and in view of Bipartite Settlement, service of respondent-workman cannot be terminated without notice. The finding in impugned Award is that no notice of termination was issued by petitioner and so, respondent-workman deserves to be reinstated. It is noted in impugned Award that respondent-workman was working as a *beldar* on daily wages w.e.f. 1st October, 1981 with petitioner-Management as attendance was marked in the office of Mahanagar Telephone Nigam Limited (*for short MTNL*), but he was disallowed to report on duty w.e.f. 22nd December, 1987 and the cause of his absence from 1st August, 1987 upto 11th December, 1987 was sickness for which he was under medical treatment in Dr. Gupta Nursing Home.

2. The challenge to impugned Award by learned counsel for petitioner-*MTNL* is on the ground that respondent-workman had not worked for 240 days and was a seasonal worker and he had not reported for duty since 14th April, 1986. It is pointed out by petitioner's counsel that it is not even the case of respondent-workman that he is entitled to notice prior to termination in terms of Bipartite Settlement and therefore, no case for reinstatement of respondent-workman in service is made out. It is pointed out that impugned Award notes that false medical certificate was tendered by respondent-workman before the Tribunal and while noting this fact, the Tribunal has strangely directed reinstatement of respondent without any justification. Thus, it is submitted that impugned Award deserves to be set aside.

3. On the contrary, learned counsel for respondent-workman supports the impugned Award and submits that in the year 1983, respondent-workman had worked for 12 months, which goes to show that he had worked for more than 240 days and so, notice before termination was essential and in the absence of notice before termination, reinstatement of respondent by the Tribunal is justified and so, this petition deserves dismissal.

4. Petitioner's counsel supplements her submission by urging that respondent has not placed on record any document to show that his service was terminated on 22nd December, 1987. It is pointed out that the Tribunal has held that the medical certificate produced by respondent was false. She further submits that respondent-workman has failed to assert in the '*statement of claims*' that he was sick from August, 1987 to December, 1987 and the Tribunal's findings that the medical certificates produced by respondent-workman were not genuine is unassailable. Nothing else is urged by either side.

5. After having heard learned counsel for the parties at length and on perusal of impugned Award, evidence on record and the decisions cited, I find that petitioner in its written statement before the Tribunal has not disputed that in the year 1983, respondent-workman had worked for the whole year. This goes to show that respondent-workman had rendered service of more than 240 days. So, it cannot be said that respondent-workman was a seasonal worker. It has to be taken that respondent-workman was a daily wager who had worked from October, 1981 till April, 1986 with breaks of few months. The basic question which falls

for consideration is whether it is a case of termination or a case of abandonment of service?

6. It has come in the cross-examination of respondent-workman that his service was not terminated and he had absented himself from duty. But it is relevant to note that respondent-workman had absented himself from duty on account of his illness. No doubt there is some contradiction between the medical certificates regarding respondent-workman being fit for duty on 1st March, 1986. One of the medical certificates indicates that respondent-workman was fit to resume duty from 1st March, 1987 whereas another medical certificate of 20th December, 1987 indicates that respondent-workman was advised rest from 1st March, 1987 till 20th December, 1987. However, this by itself does not justify Tribunal's finding of medical certificates being false. It is so said because it has not been put to respondent-workman in cross-examination that medical certificates submitted by him are false and fabricated. Evidence of respondent-workman does show that he had reported for duty on 22nd December, 1987 but he was not allowed to join duty. Pertinently, there is no cross-examination to dislodge the aforesaid assertion of respondent-workman. Petitioner has not produced any attendance register before the Tribunal or before this Court to show that on 22nd December, 1987, respondent-workman had not reported for duty or that his name was struck off from the attendance register of daily wagers.

7. Since respondent-workman's evidence of reporting back on duty on 22nd December, 1987 remains unshaken, therefore, petitioner cannot assert that respondent-workman had abandoned his service. Reliance

placed by petitioner's counsel upon decision in *Messrs. Shalimar Works Limited Vs. Their Workmen* 1960 SCR (1) 150 is of no avail for the reason that Demand Notice was served by the respondent-workman in the year 1988 and from April, 1986 up to July, 1987, respondent had remained unwell.

8. Supreme Court in *Jagbir Singh Vs. Haryana State Agriculture Marketing Board & anr.* (2009) 15 SCC 327 has reiterated the factors to be considered for grant of compensation instead of reinstatement while declaring that Award of reinstatement with back wages is not automatic in case of termination of workman.

9. During the course of hearing, it was brought to the notice of this Court that vide C.M. 17949/2014 back wages of more than ₹2,00,000/- have been paid to the respondent-workman by virtue of orders under Section 17B of *The Industrial Disputes Act, 1947*, although respondent-workman had attained the age of 63 years on 1st January, 2009. It is pertinent to note that application under Section 17B of *The Industrial Disputes Act, 1947* was filed on 28th July, 2011 and reply to this application has been filed by respondent-workman. Along with this application, a copy of Aadhar Card has been annexed, which indicates that respondent-workman had attained age of superannuation much prior to the filing of application under Section 17B of *The Industrial Disputes Act, 1947*.

10. In the facts and circumstances of this case and in the light of decision in *Jagbir Singh (supra)*, it is deemed appropriate to treat the wages erroneously paid to respondent-workman in compliance of order of

24th October, 2013 of this Court under Section 17B of *The Industrial Disputes Act, 1947* as compensation in lieu of reinstatement with 25% back wages.

11. While modifying the impugned Award in the aforesaid manner, this petition and application are disposed of, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

MAY 04, 2017
s/r

