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

Reserved on: 15th December, 2018

Pronounced on: 05th April, 2018

+ W.P. (C) 11041/2004

DELHI JAL BOARD

..... Petitioner

Through: Ms. Kanika Agnihotri, Adv.

versus

VIMAL KUMAR

..... Respondent

Through: Mr. Avadh Kaushik with
Mr. Devashish Maharishi,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. Vimal Kumar, (hereinafter referred to as “the respondent”) was working as Sewer Cleaning Machine (SCM) driver, with the petitioner – which was earlier part of the Municipal Corporation of Delhi – when he received Office Order No. 257 (Distt.) CSE dated 10th September 1990, addressed to him by the petitioner, stating that his name had been struck off from the rolls of the petitioner as SCM driver “with immediate effect i.e. 19th November 1990”. He assailed his termination by raising an industrial dispute, which stands adjudicated by the Labour Court *vide* the impugned Award dated 29th May 2003, which holds the termination of the

respondent to be violative of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) and, consequently, directs reinstatement of the respondent with full back wages and continuity of service. The petitioner, aggrieved thereby, has approached this Court, by means of the present writ petition.

The Facts and the Dispute

2. It would be apposite, before wading into any legal thickets, to undertake a leisurely peregrination through the facts.

3. In January 1987, the respondent was employed, by the Delhi Water Supply and Sewage Disposal Undertaking, a Department of the Municipal Corporation of Delhi (MCD), on muster roll basis, as SCM Driver. It may be mentioned here, that the petitioner, as a pre-existing employee of the Delhi Water Supply and Sewage Disposal Undertaking, became an employee of the Delhi Jal Board (the respondent before this Court), by virtue of Section 46(1)(c) of the Delhi Water Board Act, 1998, on the same terms and conditions as applied to him as an employee of the Delhi Water Supply and Sewage Disposal Undertaking. In order to maintain consistency of recital, this judgement would be referring, whether to the Delhi Water Supply and Sewage Disposal Undertaking or the Delhi Jal Board, as “the petitioner”.

4. While he was thus employed, on 24th October, 1989, the

respondent was informed, by the petitioner, that, consequent to his name having been sponsored, by the Employment Exchange, for appointment to the post of SCM Driver, he was required to meet the Administrative Officer (G), in the said Undertaking, along with original and photocopies of the certificates enumerating in the said letter.

5. The respondent, apparently, complied with the direction contained in the aforementioned communication dated 24th October, 1989, whereupon he was further directed, *vide* letter dated 7th November, 1989 issued by the respondent (Ex.WW-1/4), to appear before the Selection Committee, on 16th November, 1989, at 10 AM, in the office of the Executive Engineer (CSE) VI, and to carry, with him, the original documents, enumerated in the said communication, as well as attested copies thereof.

6. The respondent duly appeared before the designated Selection Committee, which selected him as SCM Driver, resulting in the said post being offered, to him, *vide* Memorandum dated 4th December, 1989, (Ex.WW-1/5) the operative portion of which read thus:

“ *Consequent upon his selection for the post of SCM Driver, Sh. Vimal Kumar S/O Sh. Ramji Lal is hereby offered the post of Sewer Cleaning Machine Driver in the pay scale of ₹ 950-20-1150-EB-25-1400 plus usual allowances as admissible under the rules in the D.W.S.&S.D. Undertaking and shall be governed by the terms and conditions attached.*

If the post of SCM Driver on the terms and conditions referred to above is acceptable to him, he should give his acceptance in writing along with 2 character certificates on the pro forma given overleaf to the undersigned within 10 (ten) days of the issue of this Memorandum. He should also appear before the Medical Officer In charge Wazirabad Dist. for medical examination within this period.”

(Emphasis supplied)

7. *Vide* Office Order No 4 (Dist.), dated 8th January, 1990, (Ex.WW-1/1) the respondent was, consequent on his abovementioned selection and submission of acceptance thereof by him, and after his medical examination, appointed temporarily as SCM Driver, in the pay scale ₹ 950-20-1150-EB-25-1400, in the Undertaking. The said Office Order read thus:

“ MUNICIPAL CORPORATION OF DELHI
D.W.S. & S. D. UNDERTAKING
LINK HOUSE : NEW DELHI

OFFICE ORDER NO. 4 (Dist.) Dated: 8/1/1990

Consequent upon their selection and submission of acceptance followed by their being declared medically fit, the following are, hereby appointed temporarily to the post of Sewer Cleaning Machine Driver in the pay scale of ₹ 950-20-1150-EB-25-1400 plus usual allowances as admissible under the rules in the D.W.S. & S.D. UNDERTAKING and shall be governed by the terms and conditions attached/printed overleaf.

They are directed to report for further posting with Director (CSE).

S. No. Name/Father's Name S/Shri

1. Rameshwar Mahto s/o
Shri Dular Chand Mahto (S/T)
R/o D-227, Raghubir Nagar,
New Delhi-110027.
2. Vimal Kumar s/o Sh. Ramji Lal (S/C),
c/o ZE (DR) I City Zone.

(Authority:- D.C.(W)'s orders dated 21.11.89 and
Director (A & P) orders dated 1.1.90).

(G. K. MALIK)
ADMINISTRATIVE OFFICER (G)
No AO (G) CSE/Apptt./SCM Driver/89-90/1813 Dt.
8/1/90"

8. Posting Orders in respect of, *inter alia*, the respondent, were issued, *vide* Office Order No 4 dated 11th January, 1990 (Ex.WW-1/2). The order specifically stated that the posting of the respondent was "against a vacant post".

9. On 11th January, 1990, the respondent submitted a "Joining Report" (Ex.WW-1/7) to the Executive Engineer (CSE) II of the Undertaking, stating that "with reference to your Office letter No 1813 AO (G) CSE/Apptt./SCM Driver/89-90/1813 dated 8-1-90", he was joining his duty on 11th January, 1990.

10. *Vide* Office Order No 405, dated 19th January, 1990, (Ex.WW-1/8) stated to be issued "in compliance of Office Order No. 4 dated 11-1-90", the two SCM Drivers, appointed under the said Office Order No. 4, were further posted, with the respondent

being posted at “Model Town Store”.

11. Accordingly, *vide* letter dated 19th January, 1990 (Ex.WW-1/9), the respondent reported for duty at the Model Town Store of the petitioner. The incharge of the Store entered an endorsement, on the said joining letter submitted by the respondent, reading “may be allowed to join the duty”.

12. On 10th September, 1990, Office Order (O.O.) No 257 (Dist.) C.S.E. filed by the petitioner before the LC and exhibited, accordingly as (Ex.MW-1/2) was issued by the Administrative Officer (G) in the office of the petitioner, which read as under:

“DELHI WATER SUPPLY AND SEWAGE DISPOSAL
UNDERTAKING
LINK HOUSE: NEW DELHI

O.O. No. 257 (Dist.) C.S.E.

Dated: 10.9.90

The services of the following officials are no more required by the Undertaking *in the regular capacity of SCM Drivers:-*

1. Sh. Babu Ram/Sh. Budh Singh
2. Sh. Vimal Kumar/Sh. Ramji Lal
3. Sh. Anish Kumar/Sh. Mukhtiar Singh

They, therefore, stand relieved with effect from the expiry of 30 days from the date of issue of these orders.

Authority: Addl. Cm. (W) orders dt. 6.8.90 & Dir (A & P)
Orders dt. 29.8.90

(R.S. GODBOLEY)
ADMINISTRATIVE OFFICER (G)”

13. On 19th November, 1990, the following communication was issued, to the respondent, by the petitioner (Ex.WW-1/11):

“Subject – Removal From Regular Service From the Undertaking

In compliance of O. O. No 257/Distt/CSE dated 10/9/90 issued by the AO (G), your name has been struck from the Roll Call as SCM driver, with Immediate Effect i.e. 19/11/90.

Your services are no more required in the regular capacity of SCM Driver. However if desired, you may represent to the Admin if desired by you.

ZE (Dr) II
CL Zone”

14. *Vide* letters dated 29th November, 1990 (Ex.WW-1/12), 20th December, 1990 (Ex.WW-1/13) and 19th February, 1991, (Ex.WW-1/14) the respondent represented, to the petitioner, against the termination of his services as SCM Driver. It was stated, in the said representations, that the termination order, dated 19th November, 1990, had been received, by him, only on 27th November, 1990. The respondent further submitted, therein, that he had been earlier marked present upto 23rd November, 1990, and that the Attendance Register had subsequently been altered to show him as absent for the period 19th to 23rd November, 1990. The respondent protested against the termination of his service without even a month’s notice, and prayed that he be reinstated.

15. In the meantime the Zonal Engineer (Dr) I issued a Certificate dated 21st December, 1990 (Ex. WW-1/10), which read thus:

“OFFICE OF THE ZONAL ENGINEER (dr) I
Municipal Corporation of Delhi
Citizone, Minto Road, New Delhi-2

This is to certify that Sh. Vimal Kumar S/O Sh. Ramji Lal worked as SEWER CLEANING MACHINE (Driver) on M/Role since 1987 to 6th January, 1990. His work and conduct is good. In his working period, we found him honest and hard-working man.

We wish him every success in his future life.

ZONAL ENGINEER (Dr) I
M.C.D. CITY ZONE
NEW DELHI.”

16. The respondent's representations eliciting no response from the petitioner, the respondent filed a complaint, dated 20th December, 1990, before the Labour Officer, who attempted reconciliation and, ultimately, advised the respondent, on 24th July, 1991, to file a proper claim before the Conciliation Officer.

17. The respondent did so, but without success, whereupon he initiated an industrial dispute, which was referred, by the Secretary (Labour), Delhi Administration, to the Labour Court for adjudication, under Section 10(1)(c) and Section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID

Act”), *vide* Order No F.24 (3456)/91-Lab, dated 9th January, 1991, containing the following single term of reference:

“Whether the services of Sh. Vimal Kumar, have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

Proceedings before the Labour Court

18. The respondent filed his Statement of Claim, before the Labour Court, contending that his service had been wrongfully, illegally and unjustifiably terminated by the petitioner and that he was, therefore, entitled to reinstatement with full back wages and continuity of service.

19. The petitioner filed its Written Statement, in response to the Statement of Claim of the respondent, submitting that the appointment, of the respondent, with the petitioner, had taken place *vide* Office Order No. 4, dated 8th January, 1990, which stated that he was being appointed temporarily, subject to termination at any time by one month’s notice. As such, it was contended that there was nothing illegal in the manner in which the respondent’s services had been terminated. It was further contended that, prior to 8th January, 1990, the respondent had been engaged only on muster roll/daily wage basis, in the exigencies of work, for a specified time, against specifically sanctioned work, and that his services had been automatically disengaged after the expiry of the

said sanction/specified time. It was further sought to be contended that, in fact, the respondent's appointment in January 1990 was not in order, as, inadvertently, eight SCM Drivers had been appointed against five vacant posts. As such, it was submitted that, when the petitioner came to know of the three excess appointments made by it, the services of the three junior most SCM Drivers, i.e. Babu Ram, Anish Kumar and the respondent, were discontinued, *vide* Office Order dated 10th September, 1990. In view of the said submissions, the petitioner sought to contend that the prayer, of the respondent, for being reinstated in service with back wages, was meritless.

20. The respondent filed a rejoinder, to the written statement of the petitioner, before the Labour Court, categorically denying the assertion that he had been assigned specific work for specific time against specific sanction. It was contended that the respondent was appointed on regular basis, and that, consequently, there could be no question of any expiry of any specifically sanctioned work. The submission, of the petitioner, that it had effected three appointments in excess of the available vacancies, was also denied, pleading that this contention had been raised only so as to defeat the case of the respondent. It was reiterated that, with effect from 11th January, 1990, the respondent had been appointed on regular basis as SCM Driver.

21. The Labour Court, consequent to completion of pleadings,

framed only a single issue for its consideration, reading “as per terms of reference”.

22. Both parties were permitted to lead evidence. The respondent examined only himself, as WW-1, whereas the petitioner examined Mr. R.K. Sharma, Administrative Officer (G) in the office of the petitioner, as MW-1.

23. Examination-in-chief of the respondent, as WW-1, before the Labour Court, took place on 27th August, 1999, during which the respondent deposed, *inter alia*, that (i) he had been working with the petitioner as SCM Driver since January, 1987, (ii) he was appointed as SCM Driver on 8th January, 1990, and regularised as such, and given posting, on 11th January, 1990, (iii) pursuant to his being selected by the Selection Committee, he joined the petitioner on 11th January, 1990, (iv) he was posted at the Model Town Office of the petitioner on 19th January, 1990 and (v) he worked with the petitioner till 27th November, 1990, till which date his attendance had been marked. He further submitted that he had been unemployed since the date of his termination. The suggestion, put to the respondent during cross-examination, that the petitioner had inadvertently selected eight candidates against five vacancies, was emphatically denied by the respondent, who further submitted that it was wrong to suggest that the services of the three junior-most candidates had been terminated.

24. MW-1 RK Sharma was examined-in-chief and cross-examined on 28th April, 2003. He tendered his affidavit by way of evidence, dated 5th March, 2001, in examination-in-chief, in which it was sort to be contended that (i) the respondent had been “engaged on daily wages muster roll from time to time in the exigency of work against specific sanctions for a specific period”, (ii) such muster roll workers stood automatically disengaged on the expiry of the work for which their services had been specifically sanctioned, (iii) the services of the respondent had lastly been engaged *vide* Office Order No 4 (Dist) dated 8th January, 1990, and (iv) his services were disengaged *vide* letter dated 10th September, 1990, in accordance with the conditions laid down in his appointment letter. In his examination-in-chief, MW-1 RK Sharma testified as to the correctness of the above-mentioned affidavit-in-evidence submitted by him. In his cross-examination, however, Mr. Sharma expressed ignorance regarding termination of the services of the respondent on 19th November, 1990, stating that his affidavit was totally silent in this regard.

25. The Labour Court heard learned counsel appearing before it on behalf of the petitioner and respondent and, thereafter, adjudicating the *lis* between them, held thus:

- (i) From the evidence led by the petitioner and respondent, it was certain that the respondent remained in the employment of the petitioner from 8th January, 1990 to

10th September, 1990.

(ii) Besides this, the communications dated 24th October, 1989 *supra*, 7th November, 1989 *supra* and 4th December, 1989 *supra* made it abundantly clear that the respondent had remained on the rolls of the petitioner prior to 8th January, 1990 as well.

(iii) The communication, dated 19th November, 1990, from the Zonal Engineer (Dr), CL Zone to the respondent, went to show that the services of the respondent had been terminated with effect from 19th November, 1990.

(iv) No evidence had been produced, by the petitioner, to indicate that, prior to 8th January, 1990, the respondent was engaged by it in the exigencies of service under specified contracts.

(v) The result was that the respondent had remained employed with the petitioner for more than 240 days continuously in one calendar year preceding his termination.

(vi) This Court had, in *Horticulture Department of Delhi Administration vs Trilok Chand*, 82 (1999) DLT 747, held that daily rated workmen were also entitled to the benefit of Section 25-F of the ID Act.

(vii) As such, the issue of whether the respondent's termination was illegal and unjustified, or not, was decided in the respondent's favour and against the petitioner.

Following on the above reasoning, the Labour Court held that, in the facts of the case, the petitioner deserved to be directed to reinstate the respondent with full back wages and continuity of service.

26. The petitioner has approached this court thereagainst.

27. Detailed submissions have been advanced, before me, by Ms. Kanika Agnihotri and Mr. Awadh Kaushik, learned counsel appearing for the petitioner and respondent respectively.

28. The submissions of Ms. Kanika Agnihotri, on behalf of the petitioner, may be enumerated thus:

(i) Consequent on his appointment, on temporary muster roll basis, in 1987, the respondent worked, in the same capacity, till 6th January, 1990. Thereafter, there was a break in his service till 11th January, 1990, as was manifested by Office Order No 4 dated 11th January, 1990 *supra* and by the Joining Report, submitted by the respondent himself on 11th January, 1990. His appointment, *vide* the said Office Order

dated 11th January, 1990, was a fresh appointment. He was terminated on 10th September, 1990; accordingly, his period of “continuous service”, if at all, was only from 11th January, 1990 to 10th September, 1990. The Labour Court, she would submit, erred in failing to take into account the 5 days’ break in service, of the respondent, from 6th January, 1990 to 11th January, 1990. This single fact, in her submission, disentitled the respondent the benefit of Section 25F of the Act as he did not fulfil the requisite condition of 240 days continuous service in the preceding year.

(ii) Even after his appointment with effect from 11th January, 1990, Ms. Agnihotri would submit, the respondent joined duty only on 19th January, 1990, as was reflected in his letter, of the said date, addressed to the petitioner (exhibited as Ex. WW-1/9 before the Labour Court). As such, the period of “continuous service”, of the respondent, she would contend, could be reckoned only from 19th January, 1990, at the earliest.

(iii) In this context, I drew the attention of Ms. Agnihotri to para 2 of the written statement filed by her client before the Labour Court, which reads as under:

“That without prejudice to the above-mentioned contents the services of the workman has been terminated in terms of his appointment letter. *He was appointed vide Office Order No 4 (Dist) dated*

8.1.1990. His appointment was subject to the terms and conditions of the appointment letter and as per terms and conditions of service. He was appointed temporarily and the appointment may be terminated at any time by one month's notice. Therefore there was nothing illegal in the termination of his services. The reference is bad in law and this Hon'ble court has got the jurisdiction to try the same."

(Emphasis supplied)

Ms. Agnihotri submits that the reference to the "appointment" of the respondent, *vide* Office Order dated 8th January, 1990, as mentioned in the italicised sentence from the above extracted paragraph in the written statement of the petitioner, was by way of error, and that Office Order No 4, dated 11th January, 1990 *supra* clearly indicated that Office Order No 4 (Dist), dated 8th January, 1990, merely referred to the admissible pay of the respondent.

(iv) In this context, Ms. Agnihotri also presses, into service, the certificate dated 21st December, 1990 (Ex. WW-1/10) issued by the Zonal Engineer, MCD, which already stands reproduced hereinabove. The said certificate, too, she would point out, indicated that the service, on muster roll basis, rendered by the respondent, came to an end on 6th January, 1990.

(v) Ms. Agnihotri has also sought to submit that the termination of the respondent was as per the stipulation in

his contract of appointment to the effect that “the appointment may be terminated at any time by one month’s notice by any authority of either side with or without assigning any reason”. Such being the nature of his termination, she would submit that the termination could not be said to amount to “retrenchment” in view of sub-clause (bb) of clause (oo) of Section 2 [hereinafter referred to as Section 2(oo) (bb)] of the ID Act. For ready reference, clause (oo) of Section 2 of the ID Act may be reproduced, as under:

‘(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman;
or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;'

(vi) Ms. Agnihotri further submits that the onus, to establish that he had served the petitioner continually for 240 days in the preceding year, lay squarely on the respondent, and that he had miserably failed to discharge it. Ms. Agnihotri relies, for the purpose, on the judgment of the Supreme Court in *Essen Dainki vs. Rajeev Kumar*, AIR 2003 SC 38.

(vii) The submission, of the respondent, that he had been appointed, w.e.f. 11th January, 1990, on regular basis as SCM Driver, was incorrect.

(viii) As a matter of fact, the appointment of the respondent as SCM Driver was in contravention of the law, as he was one of the three candidates who had been appointed in excess of the available vacancies, which were only five in number.

(xi) Condition No.3 of the terms and conditions of service of the respondent, as annexed to Office Order No. 4 (Distt.) dated 8th January, 1990 (*supra*), permitted the petitioner to terminate the appointment of the respondent at any time by one month's notice, without assigning any reason. Office

Order No. 257 (Distt.) CSE, dated 10th September, 1990 (Ex.MW-1/2) clearly stated that the service of the respondent were no more required by the undertaking and, therefore, that he stood relieved w.e.f with expiry of 30 days from the date of issue of the said order. Read in conjunction with the communication dated 19th November, 1990 (Ex. WW-1/11 *supra*), whereby the name of the respondent was struck off the rolls of the petitioner with immediate effect, i.e. w.e.f. 19th November, 1990, it was clear that the termination of the services of the respondent was in accordance with Condition No. 3 (*supra*) of the terms and conditions of his service. As such, by virtue of sub clause (bb) of Section 2 (oo) of the ID Act, the termination of the respondent's services would not constitute "retrenchment" so as to enure, in his favour, the advantage of Section 25-F of the said Act.

29. Mr. Avadh Kaushik, arguing *per contra*, contended as under:

(i) Even if the services of the respondent were to be reckoned from 11th January, 1990, he would still have served the petitioner, even in 1990, for more than 240 continuous days, as his services were discontinued only on 19th November, 1990.

(ii) Ex. WW-1/7 made it clear that, consequent to his appointment as a regular SCM Driver *vide* order dated 8th

January, 1990, the respondent had joined services, in the said capacity on 11th January, 1990. The arguments, of the petitioner, that, against five vacancies, eight SCM Drivers had been appointed, was palpably false. Mr. Kaushik invited my attention, in this regard, to the appointment order, dated 11th January, 1990 (Ex. WW-1/2 *supra*) which clearly stated that the respondent was being posted against a vacant post.

(iii) Section 2(oo)(bb) of the ID Act was never argued, by the petitioner, before the Labour Court; as such, it was not open to the petitioner to urge the said contention before this Court in the first instance.

(iv) Similarly, the contention of the petitioner, that the respondent had been appointed for specific sanctioned work, against specific contracts, was not supported by any evidence. There was no contract, against which the respondent was appointed, which was subsequently terminated.

(v) Lastly, Mr. Kaushik placed reliance on the judgement of the learned Single Judge of the Bombay High Court in *Adminstrator, Kalyan Municipal Corporation v. Alka B. Brahme, 2010 (127) FLR 1061*.

Analysis and Decision

30. While examining the rival stands of the parties before it, this Court is required to be mindful of the limited scope of its jurisdiction in such cases, which is circumscribed by the contours of Article 227 of the Constitution of India, which stand classically delineated, in the well known decision in *Syed Yaqub vs K. S. Radhakrishnan*, AIR 1964 SC 477, thus:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of

fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted

by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.”

31. I had, in an earlier decision in *DDA v. Mool Chand*, *MANU/DE/2016/2017*, digested the various judicial authorities on the issue and worked out the following criteria, as emanating therefrom, which would guide the approach of this Court, while exercising jurisdiction under Article 227 of the Constitution of India, against awards of Labour Courts and Industrial Tribunals:

(i) The Labour Court/Industrial Tribunal is the final fact finding authority.

(ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.

(iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

32. The above parameters would be required to be borne in mind, while examining the merits of the submissions advanced by either party before me.

33. To me, it appears clear that the respondent, after being initially appointed, on muster roll basis, by the petitioner as SCM Driver in January, 1987, worked in the said capacity, on daily wages, with the petitioner, till 6th January, 1990, and that he was again appointed, as SCM Driver, *vide* order dated 11th January, 1990 (Ex WW-1/2 *supra*), in which capacity he continued to work till his termination on 19th November, 1990. I am unable to accept

the submission of Ms. Agnihotri that the appointment of the respondent, as SCM Driver, *vide* order dated 11th January, 1990 (Ex. WW-1/2 *supra*) was not regular in nature. The petitioner's own documents indicate otherwise. The communication, dated 24th October, 1989 (Ex. WW-1/3 *supra*), from the Administrative Officer (G) in the Office of the Undertaking to the petitioner, clearly states that, consequent to his applying for the post of SCM Driver, his name was sponsored by the Employment Exchange. It was pursuant thereto, that the said communication required the respondent to see the Administrative Officer (G) on 2nd November, 1989 along with his original documents, as well as photocopies of the certificates enumerated in the said communication. This was followed by the communication dated 7th November, 1989 (Ex. WW-1/4 *supra*), directing the respondent to appear *before the Selection Committee* on 16th November, 1989 at 10.00 AM, in the office of the Executive Engineer (CSE) VI with his original certificate of age, middle pass certificate and certificate of requisite educational qualifications/experience. The petitioner duly appeared before the Selection Committee, which *selected* him for the post of SCM Driver, as conveyed to him *vide* Memorandum dated 4th December, 1989 (Ex. WW-1/5 *supra*). In this connection, it is worthwhile to note that though, undoubtedly Condition No. 2 of the terms and conditions of service of the respondent, as annexed to the said Memorandum dated 4th December, 1989, stated that the appointment of the respondent was "temporary", the recital, to the effect that the appointment of the respondent was temporary in

nature, stands specifically scored out in all other documents. To wit, (i) the word “temporarily” has specifically been scored out in Office Order No. 4 dated 8th January, 1990 (*supra*), (ii) the word “temporarily” has been inserted, and thereafter, scored out in the Office Order dated 11th January, 1990 (*supra*) and (iii) the words “on temporary basis” again stand scored out in the Memorandum dated 4th December, 1989 (*supra*). It is not the petitioner’s case that such scoring out has been effected by the respondent. As such, it is difficult to regard the appointment of the respondent, as SCM Driver, in January, 1990 as temporary in nature. That the said appointment of the respondent was not, in fact, temporary, would further stand underscored by the fact that Office Order No. 4 dated 11th January, 1990 (*supra*) itself states that the posting of the respondent *was against a vacant post*. Further, and perhaps most significantly, the documents, whereby the service of the respondent was terminated, i.e. Office Order No. 257 (Distt.) C.S.E. dated 10th September, 1990 (Ex. MW-1/2 *supra*) and communication dated 19th November, 1990 from the ZE (DR) II, CL Zone to the respondent, (Ex WW-1/11 *supra*) refer to the appointment and discharge of duties, by the respondent as SCM Driver to be “in the regular capacity”. A comprehensive and cumulative reading of these documents, therefore, unequivocally indicates that the appointment of the respondent as SCM Driver, *vide* order dated 11th January, 1990 (*supra*) – which was preceded by sponsorship by the Employment Exchange, interview and due selection – was regular in nature and not “temporary” in any sense of the word.

34. That being so, there is merit in the submission of Mr. Avadh Kaushik that even if the *terminus a quo* and *terminus ad quem* of the respondent's regular service as SCM Driver were to be regarded as 11th January, 1990 and 19th November, 1990 respectively, he would still have completed 240 days of continuous service in one calendar year, thereby entitling him to the benefit of Section 25-F of the ID Act, read with Section 25B thereof.

35. Mr. Kaushik is also justified in his submission that the stand, of the petitioner, before this Court, that the services of the respondent, between 1987 and 6th January, 1990, was against specified sanctioned work in the exigencies of the situation from time to time, does not stand borne out by any evidence on record. It is a matter of fact that no material has been cited, or produced, by the petitioner, to support its submission that the services of the respondent were being utilized only as and when specific exigencies requiring such utilization arose, and sanction therefor was granted, and that his services were discontinued on such exigency ceasing to exist. In fact, it appears, on the face of it, that this stand has been adopted only as a means to defeat the legitimate case of the respondent.

36. The submission of Ms. Agnihotri that the reference, in Office Order No. 4 dated 11th January, 1990 (Ex. WW-1/2) to Office Order No. 4 (Distt.) dated 8th January, 1990 and the recital,

in para 2 of the written submissions filed by the petitioner before the Labour Court, to the effect that the respondent had been appointed *vide* Office Order No. 4 (Distt.) dated 8th January, 1990, was erroneous, has no legs to stand on. In fact, the available record discloses that the appointment order of the respondent, as SCM Driver, was actually Office Order No. 4 (Distt.) dated 8th January, 1990 (Ex. WW-1/1 supra) and that Office Order No. 4, dated 11th January, 1990 (Ex. WW-1/2 supra) was only a Posting Order. The reliance, by Ms. Agnihotri, on Ex. WW-1/9, which was the Joining Report dated 19th January, 1990 of the respondent, at the Model Town Store, is also totally misconceived, as the said Joining Report was consequent to the “further posting” of the respondent, at the Model Town Store, as effected *vide* Office Order No. 405, dated 19th January, 1990 (Ex. WW-1/8). The said Office Order dated 19th January, 1990 and the subsequent joining report of the same date, whereunder the respondent reported to the Model Town Store have, in fact, no bearing whatsoever, insofar as the controversy in the present case is concerned.

37. In view of the above discussion, the reliance, by the Labour Court, on the judgement of this Court in ***Horticulture Department of Delhi Administration (supra)*** cannot be said to be without justification. The said decision undoubtedly extends the benefit of Section 25-F of the ID Act to workmen working on muster roll basis, and no contrary decision has been brought, to my notice, by the learned counsel for the petitioner. Section 25B defines

“continuous service”, and sub-section (1) of the said Section merits reproduction as under:

“(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;”

38. A reading of the above clause (1) of Section 25B of the ID Act discloses, that “cessation of work which is not due to any fault on the part of the workman”, would also be includible while reckoning the period of continuous service. There is nothing to indicate that the cessation of work, from 6th January, 1990 to 11th January, 1990, was owing to any fault on the part of the respondent. As such, the said period would conceivably merit inclusion in the period of continuous service of the workman, which would be reckonable from January 1987 itself.

39. Even otherwise, the workman has clearly worked for more than 240 days in each of the years 1987, 1988 and 1989, even assuming his services were discontinued on 6th January, 1990.

40. Viewed any which way, therefore, the respondent is entitled to the benefit of Section 25-F of the Industrial Disputes Act, read with Section 25B(1) thereof.

41. In view of the above, there is no necessity to refer to *Essen Dainiki* (*surpa*) inasmuch as it is clear that the onus of proof, to establish that he had worked continuously for more than 240 days in a year, so as to entitle him to the benefit of Section 25F of the ID Act, was duly discharged by the respondent.

42. Ms. Agnihotri had also sought, as has already been noted hereinabove, to press, into service in her aid, clause (bb) of Section 2 (oo) of the ID Act. I am of the view that the said clause has no applicability, whatsoever, to the facts of this case. The reliance of the Ms Agnihotri is on the latter part of the said clause, which excepts, from the ambit of “retrenchment”, termination of the service of the workman as a result of the contract of employment between the employer and the workman being terminated under a stipulation in that behalf contained therein. It is nobody’s case, either before the Labour Court or before this Court, that the service of the petitioner was contractual nature. As I have already opined hereinabove, the petitioner, having been appointed consequent on recommendation by the Employment Exchange, appearance before a regular selection committee, due selection and fulfilment of all other requisite formalities including medical assessment, etc., his appointment could not be regarded as contractual or temporary, but bore all the indicia of a regular employment. I have also drawn attention to various communications, by the petitioner to the respondent – including the Communications dated 10th September, 1990 (Ex. MW-1/2) and

the “striking off” letter, dated 19th November, 1990 (Ex. WW-1/11), both of which recognise the engagement of the respondent, with the petitioner, as having been *in regular capacity* as SCM Driver. Termination of a regular employee, employed by a Governmental department, cannot, in my opinion, attract Section 2(oo)(bb) of the ID Act.

43. I may refer, with advantage, in this connection, to a judgement of a Division Bench of this Court in ***Delhi Cantonment Board v Central Government Industrial Tribunal, 2006 (88) DRJ 75 (DB)***, authored by the learned Chief Justice Markandeya Katju, J. (as he then was), wherein, after extracting Section 2 (oo) of the ID Act, the learned Chief Justice, in his typically economical style, postulated the law thus:

“7. A perusal of the above definition shows that there is no distinction in industrial law between a permanent employee and a temporary employee. *As long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act.*

8. Thus, it has been held in ***Chief Engineer (Irrigation) Chepauk, Madras v. N.Natesan (1973) II LLJ 446 (Mad.)*** and in ***Management of Crompton Engineering Co.(Madras) Private Ltd. v. Presiding Officer, Additional Labour Court (1974) I LLJ 459 (Mad.)*** that even a temporary employee falls within the definition of workman. Similarly in ***Elumalai v. Management of Simplex Concrete Piles (India) Ltd., (1970) II LLJ 454 Mad*** and ***Tapan Kumar Jena v. General Manager, Calcutta Telephones (1981) L.I.C. 68 (Cal.)*** it was held that a casual employee is also a

workman. In other words, every person employed in an industry, irrespective of whether he is temporary, permanent or a probationer is a workman vide ***Hutchiah v. Karnataka State Road Transport Corporation, (1983) I LLJ 30 Kant*** , provided he is doing the kind of work mentioned in Section 2(s).

9. Since the respondents were workmen under the Industrial Disputes Act, Section 25F of the Act had to be complied with if they had put in 240 days of service in the year prior to the date of termination of service. Respondents had admittedly put in over 240 days of service. Hence the termination of their service was illegal, since compliance of Section 25F is a condition precedent to the termination of service vide ***State of Bombay v. Hospital Mazdur Sabha, (1960) I LLJ 251 SC, National Iron & Steel Co.Ltd. v. State of West Bengal, (1967) II LLJ 23 SC*** , ***Mohanlal v. Management of Bharat Electronics Ltd. 1981 LIC 806 SC, Avon Services (Production Agencies) Ltd. v. Industrial Tribunal (1979) I LLJ 1 SC*** . etc.”

44. Reliance was placed, by a learned Single Judge of this Court, on the above pronouncement, while repelling the reliance, placed by the management in that case, on Section 2(oo)(bb) of the ID Act, to defeat the case of the workman, in ***Association of State Road Transport Undertaking vs Devender Singh, MANU/DE/0415/2014***, para 9 of which holds as under:

“9. Having considered the submissions made on behalf of the parties, on the issue of applicability of Section 2(oo)(bb) of the Act, the petitioner has not filed any office order showing the appointment of the respondent after April 08, 1997 was for every 3 months. The last appointment letter which is on record is of April 08, 1997. *In the absence of any engagement letter for a period of 3 months after April 08, 1997, the contention of learned counsel for the respondent has to be accepted inasmuch as*

the respondent's engagement continued without any break thereafter. In other words, after the year 1997 the respondent continuously worked till December, 2000. It is not the case of the petitioner that the respondent has not worked for 240 days during this period nor any evidence has been placed by the petitioner to contend otherwise. In the given facts, the provision of Section 2(oo)(bb) of the Act has no applicability. In fact, I find from the award the finding of the Labour Court on the non-applicability of Section 2(oo)(bb) of the Act. Relevant para of the Award is reproduced hereunder:

*This termination letter has been issued with the premise that the workman was a daily wager though as per the plea of the management he had already attained a temporary status. In view of a judgment in **Delhi Cantonment Board (Supra)** such termination is illegal. Furthermore, he was not a contractual employee and as such his services could not have been terminated in the manner quoted herein above. The provisions of Section 2(oo)(bb) of the ID Act will have no applicability in the instant case.”*

(Emphasis supplied)

45. The submission of Ms. Agnihotri that, as the termination of the respondent's services was effected in accordance with his “contract of employment”, Section 25-F of the ID Act would have no application is, therefore, rejected.

46. Before concluding this judgment, it would also be necessary to refer to a judgment dated 15th October, 2010 of this Court in **Delhi Jal Board v. Anish Kumar (RSA 94/2000)**. Ms. Agnihotri was at pains to point out that the said decision related to one of the other two workmen, whose service, as SCM Driver, had been

discontinued along with that of the respondent. She sought to submit that the effort, of the said workman (Anish Kumar) to challenge his termination, had failed, and this Court, being a Court of co-ordinate jurisdiction, would be bound to follow the said decision. With respect, I am unable to agree with the said submission. In the first place, *Delhi Jal Board v. Anish Kumar (supra)* was a judgment in a second appeal, under Section 100 of the Code of Civil Procedure, 1908, arising out of an original Civil Suit, and a reading of the said decision reveals that it does not deal, even obliquely, with the issue of retrenchment, or the availability, to the respondent/workman therein, of the benefit of Section 25F of the ID Act. Secondly, the said decision proceeds on an admission, by the petitioner, therein, that his appointment was on a temporary basis. In fact, it is further noted, in para 10 of the said decision, that “it was also not the case of the plaintiff that he had been appointed against a vacant post”, in view whereof the learned Single Judge, while deciding the said case, accepted the submission, of the Delhi Jal Board before, that the words “against a vacant post”, as figuring in the posting order, was a typographical error. No such disclaimer, it may be noted, has been advanced by the petitioner in the present case. Thirdly, it does not appear, from a reading of the said decision, that, as in the present case, there was an admission, on the part of the Delhi Jal Board, the nature of the service being rendered by the workman was “regular” in nature. In view of the said admission, in the present case – as contained in Office Order dated 10th September, 1990 (Ex. MW-1/2) and the communication, dated

19th November, 1990 (Ex. WW-1/11), it can hardly lie in the mouth of the petitioner to contend that the services of the respondent were merely temporary, liable to termination at any time. Fourthly, the said decision – rendered in 2010, after which the law has developed substantially – relied on the judgement of the Supreme court in ***Secretary, State of Karnataka v. Uma Devi, 2006 (4) SCC 1*** and it has been authoritatively held, by the Supreme Court itself in several decisions, including ***Hari Nandan Prasad vs Employer I/R to Management of Food Corporation of India, (2014) 7 SCC 190*** and ***Ajaypal Singh vs Haryana Warehousing Corporation, (2015) 6 SCC 321*** that ***Uma Devi (supra)*** would not apply to cases falling under Section 25F of the ID Act, concerned, as it was, more the issue of regularisation than of retrenchment. In fact, a more recent judgement, rendered by three learned Judges of the Supreme Court in ***State of J & K vs District Bar Association, Bandipora, (2017) 3 SCC 410***, has endorsed the following principles, postulated by an earlier decision rendered by two learned Judges in ***Maharashtra State Road Transport Corporation v Casteribe Rajya Parivahan Karamchari Sangathana, (2009) 8 SCC 556***, even on the issue of the power of Labour Courts and Industrial Tribunal's to direct regularisation, in the face of ***Uma Devi (supra)***:

“34. It is true that ***Dharwad District PWD Literate Daily Wages Employees' Assn. v. State of Karnataka, (1990) 2 SCC 396 : 1990 SCC (L&S) 274*** arising out of industrial adjudication has been considered in ***State of Karnataka v. Umadevi (3), (2006) 4 SCC 1*** and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in

State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753 leaves no manner of doubt that what this Court was concerned in *State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753* was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.

35. *State of Karnataka v. Umadevi, (2006) 4 SCC 1: 2006 SCC (L&S) 753* is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. *State of Karnataka v. Umadevi (3), (2006) 4 SCC 1* does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. *State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753* cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”

47. I am, therefore, of the opinion that *Uma Devi (supra)* cannot impact the jurisdiction, or power, of the Labour Court, or the

Industrial Tribunal – or, for that matter, of this Court exercising power, by way of judicial review, under Article 227 of the Constitution of India – to grant relief, in a case such as the present.

48. In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25F of the ID Act and that therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that, going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion that the facts of the present case do not warrant any interference with the direction, of the Labour Court to the petitioner, to reinstate the respondent in service with the benefit of continuity of service. The petitioner, is therefore, directed to reinstate the respondent in service forthwith.

49. Inasmuch as the respondent has not been rendering any service to the petitioner, since the date of his termination, however,

the back wages payable to the respondent would be limited to 50% of the wages which he would have drawn had he continued to serve the petitioner. The petitioner is directed, therefore, to work out the said amount and disburse the same, to the respondent. While doing so, however, any amount paid to the respondent pursuant to orders passed by this Court, under Section 17-B of the ID Act, or otherwise, would be adjusted.

50. The petitioner is directed to comply with the above directions within a period of eight weeks from the date of receipt by it, of a certified copy of this judgment.

51. Subject to the above observations and directions, the writ petition is dismissed.

52. There shall be no order as to costs.

**C. HARI SHANKAR
(JUDGE)**

APRIL 5, 2018
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