

\$~R-31A

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

Date of decision: 13.02.2019

+ **W.P.(C) 2591/2003**

UNIVERSITY OF DELHI Petitioner
Through: Mr.Shiv Ram Singh, Adv.

versus

RAM KISHAN & ORS. Respondents
Through: Mr.Rajiv Agarwal with
Ms.Meghna De, Mr.Sachin
Kumar & Ms.Neelam Tiwari,
Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Article 226/227 of the Constitution of India, the petitioner/Delhi University impugns award dated 02.09.2002 passed by the learned Industrial Tribunal-II, Delhi in ID No.44/2000 whereunder the learned Labour Court after coming to the conclusion that the services of the respondent/workman had been illegally terminated w.e.f. 01.02.1998, directed that he would be deemed to be in service from 01.02.1998. The learned Labour Court consequently directed that all consequential reliefs and wages would be payable to the respondent/workman.

2. Learned counsel for the petitioner while impugning the award states that the same is based on a wholly erroneous premise that the respondent/workman was in continuous service of the petitioner from 01.01.1990 till 01.02.1998, on which date he claims to have been illegally terminated. He states that even though the respondent had in his claim statement made a bald assertion that after having been appointed as a Mali w.e.f. 01.01.1990 he had continued to work without any interruption till his illegal termination on 01.02.1998, the documents filed by him in support of his claim, itself belied his stand. He draws my attention to the three experience certificates that were filed by the respondent in support of his claim statement and states that the said certificates in itself show that the respondent was in service only for specific periods from 01.11.1991 to 31.05.1992, 11.05.1993 to 31.07.1993 and 02.08.1995 to 31.01.1996 and in these circumstances, there was no question of him being terminated on 01.02.1998.

3. Learned counsel for the petitioner states that the petitioner had in its written statement filed before the learned Labour Court specifically denied the respondent's bald averment and had categorically stated that he had worked only for short periods between 11.05.1993 to 31.07.1993, 11.05.1994 to 08.08.1994, 19.09.1996 to 29.11.1997, 10.02.1998 to 09.03.1998 and 04.05.1998 to 03.07.1998. He thus submits that the learned Labour Court has erred in coming to the conclusion

that the respondent/workman was in continuous employment of the petitioner from 01.01.1990 to 01.02.1998, by wrongly placing the onus on the petitioner to disapprove the assertion of the respondent/workman that he was in continuous employment from 01.01.1990 to 01.02.1998. He, thus, prays that the impugned award which is based on the presumption that the respondent was in continuous service from 01.01.1990 to 01.02.1998 be set aside.

4. On the other hand, Mr.Rajiv Aggarwal, the learned counsel for the respondent while supporting the impugned award states that there is no perversity in the award warranting interference by this Court in its writ jurisdiction. Mr.Aggarwal also draws my attention to the one page affidavit of the petitioner's sole witness namely, Shri Tilak Raj filed before the learned Labour Court and states that the two documents annexed along with this affidavit did not at all relate to the issue as to whether the respondent was in service from 01.01.1990 to 01.02.1998 and were, therefore, not relied upon by the learned Labour Court. He also draws my attention to the cross-examination of the aforesaid witness wherein he had categorically admitted that an attendance register in respect of daily wagers was duly maintained by the petitioner but the same was neither tendered in evidence nor brought at the time of cross-examination. He thus contends that once the writ petitioner chose not to file any documents in support of its

assertion that the respondent had been engaged only for certain pre-determined periods, the learned Labour Court was fully justified in coming to the conclusion that the respondent was in continuous employment from 01.01.1990 to 01.02.1998 as claimed by him in discarding the defence raised by the petitioner. He, therefore, prays that the writ petition be dismissed.

5. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record. I find that the only issue raised before me by the learned counsel for the petitioner is that the finding of the learned labour court that the respondent was in continuous service from 1.1.1990 to 1.02.1998, on which date he was illegally terminated was wholly perverse and therefore the direction to reinstate was also unsustainable. A perusal of the pleadings and the evidence led before the learned Labour Court makes it evident that even though the respondent workmen has categorically stated he was in continuous employment with the petitioner from 1.1.1990 to 1.02.1998, the petitioner had failed to tender any evidence whatsoever in support of its contention that the respondent was employed for fixed periods. The petitioner admittedly did not produce either the attendance registers or the wage register before the court. Once the petitioner's sole witness had categorically admitted that attendance registers in respect of daily wagers were being maintained, there was no reason for the

petitioner not to produce the same before the learned Labour Court. In my view, the attendance registers would have definitely thrown light on the question as to whether the respondent was in continuous employment from 01.01.1990 as claimed by him, which registers before the Court, the petitioner for reasons best known to it, failed to produce.

6. Even though the learned counsel for the petitioner has sought to rely on the experience certificates filed by the respondent, to contend that the said certificates in itself show that he had been engaged for a fixed period, I find no merit in the same. A bare perusal of the said certificates issued by different Section Officers of the petitioner show that these certificates do not, in any manner, state that the petitioner had been appointed only for fixed term. The said certificates only refer to the periods for which the respondent was perhaps working under different Section Officers and therefore there was no reason to disbelieve the respondent's claim that he was in continuous service from 01.01.1990 to 01.02.1998. In these circumstances, I find no infirmity in the conclusions arrived at by learned Labour Court that the respondent had been able to show that he was in continuous employment from 1.1.1990 till 1.02.1998, when he was terminated without any notice or enquiry.

7. No other issue has been pressed before me by any of the parties.

8. For the aforesaid reasons, I find no infirmity in the impugned award. Even otherwise it is a settled legal position that the writ jurisdiction and powers of superintendence of this Court have to be exercised only sparingly, when there has been a manifest failure of justice, or when the principles of natural justice have been flouted. In my opinion, no such eventuality has occurred in the present case so as to warrant the exercise of the powers of this Court under Article 226 and 227 of the Constitution. I, therefore, find absolutely no reason to interfere with the impugned award.

9. The writ petition being meritless is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 13, 2019
gm