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

% **Date of Decision: 30th September, 2019**

+ W.P.(C) 8083/2008 & CM No.35974/2019

M.C.D.

..... Petitioner

Through: Ms. Saroj Bidawat, Advocate.

versus

SHANTI DEVI

..... Respondent

Through: Mr. Bankey Bihari, Advocate with
respondent in person.
Mr. Raavi Birbal, Advocate as amicus
curiae.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the award dated 11th February, 2005 whereby the learned Labour Court awarded reinstatement with 25% back wages with continuity of service to the respondent.
2. The petitioner engaged the respondent as *Mahila Beldar* on daily wages on 14th July, 1997 and she was disengaged on 06th January, 1998 whereupon the respondent raised an industrial dispute which was referred to the Labour Court.
3. The respondent alleged in her statement of claim that she was appointed as *Mahila Beldar* on daily wages on 14th July, 1997 and she worked till December, 1997. According to the respondent, her termination was violative of Section 25 F, G and H of the Industrial Disputes Act.

4. The petitioner contested the claim on the ground that the respondent was engaged as *Mahila Beldar* on daily wages as per the work requirement from 14th July, 1997 to 06th January, 1998 and her disengagement did not amount to retrenchment as she had not put in 240 days service in the calendar year.

5. The learned Labour Court held the termination of the respondent to be illegal. The Labour Court further held that even if the action was treated as retrenchment, it was violative of Section 25 G and H of the Industrial Disputes Act. The learned Labour Court awarded reinstatement with 25% back wages with benefit of continuity of service to the respondent.

6. Learned counsel for the petitioner urged at the time of the hearing that the respondent was engaged as *Mahila Beldar* on daily wages as per the need of work and her disengagement cannot be treated as retrenchment under Section 25 F of the Industrial Disputes Act as the respondent did not work for 240 days in the preceding year. It was further submitted that the reinstatement with 25% back wages was not warranted. It was further submitted that petitioner paid approximately Rs.11,40,918/- to the respondent under Section 17B of the Industrial Disputes Act from 01st February, 2005 till 31st March, 2019. Reliance was placed on ***Himanshu Kumar Vidyarthi v. State of Bihar***, 1997 (76) FIR 237, ***Secretary, State of Karnataka v. Uma Devi***, (2006) 4 SCC 1, ***Hari Nandan Prashad v. Employer I/R to Management of FCI***, AIR 2014 SC 1848, ***Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh***, (2013) 5 SCC 136.

7. Learned counsel for the respondent urged at the time of the hearing that the termination of the respondent was illegal and violative of Section 25

F, G and H of the Industrial Disputes Act. It is submitted that the Labour Court has rightly awarded reinstatement with 25% back wages and continuity of service to the respondent. Reliance was placed on **Chand Ram v. MCD**, 2009 SCC OnLine 2956, **Dharam Chand v. State of H.P.**, 2015 (5) SLR 113.

8. Ms. Raavi Birbal, learned amicus curiae urged following submissions at the time of the hearing:

8.1. The disengagement on casual basis does not attract Section 25 G and H of the Industrial Disputes Act. Reliance was placed on **Reserve Bank of India v. Gopinath Sharma**, (2006) SCC 221, **Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh**, (2013) 5 SCC 136, **Haryana State Agriculture Marketing Board v. Subhash Chand**, (2006) 2 SCC 794, **Escorts Limited v. Presiding Officer**, (1997) 11 SCC 521, **Himanshu Kumar Vidyarthi v. State of Bihar**, (1997) 4 SCC 391, **Birla VXL Ltd. v. State of Punjab**, (1998) 5 SCC 632, **Regional Manager, State Bank of India v. Mahatma Mishra, Vidyavardhaka Sangha v. Y.D. Deshpande**, (2006) 12 SCC 482, **Surendra Kumar Sharma v. Vikas Adhikari**, (2003) 5 SCC 12, **State of Rajasthan v. Ramesh Lal Gehlot**, (1996) 1 SCC 595.

8.2. In case of temporary employee, no enquiry is required before termination. Reliance was placed on **Ravinder Kumar Mishra v. U.P. State Handloom Corporation Limited**, 1987 (Supp) SCC 739.

8.3. The reinstatement with 25% back wages was not warranted in the present case. Reference was made to **Jagbir Singh v. Haryana State Agriculture Marketing Board**, 2009 (IV) LLJ 336.

8.4. The findings of the Labour Court regarding dismissal and retrenchment are contradictory. Reference was made to *State of Punjab v. Jagir Singh*, (2004) 8 SCC 129 and *Lachman Das v. M/s Indian Express Newspaper*, 1976 Lab IC 823.

Findings

9. The respondent worked with the petitioner on casual basis as *Mahila Beldar* on daily wages from 14th July, 1997 to December, 1997 as per the work requirement. The disengagement of the respondent does not amount to retrenchment. The disengagement of the respondent who had not completed 240 days of service in the preceding year, does not attract Section 25 G and H of the Industrial Disputes Act. The impugned award is contrary to the well settled law. Reference be made to the judgments cited by the learned amicus curiae. The respondent was not entitled to reinstatement and 25% back wages. However, the respondent made fortune in this litigation by receiving about Rs.12 lakh from the petitioner under Section 17B of the Industrial Disputes Act.

10. The writ petition is allowed and the impugned award is set aside.

11. Pending application is disposed of.

J.R. MIDHA, J.

SEPTEMBER 30, 2019

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