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

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Date of Order: 07th May, 2019

+ LPA 542/2017, C.M.29162/2017

S K TRIPATHI

..... Appellant

Through: Appellant in person.

versus

SECRETARY AGRICULTURE PRODUCE MARKET
COMMITTEE BOARD & ORS.

..... Respondents

Through: Ms.Avnish Ahlawat, Ms.Palak
Rohmetra and Ms.Sakshi Shairwal,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 06.03.2017 and 15.05.2017 passed by a learned Single Judge of this Court. The appellant had joined the services of respondent no.1 on 07.08.1985 at the post of Sub Inspector as a daily wager. Admittedly, some similarly situated persons filed a writ petition in the Supreme Court of India being W.P.(C) 946/1986 titled as Daily Wagers Union and Others vs. Delhi Administration and Others. It has been the consistent stand of the parties that vide order dated 30.08.1988, the Supreme Court of India had directed the respondents to consider the case of 132 workers including the appellant herein, for regularization, with the further direction that their services would not be terminated until their cases for

regularization were considered. It is the case of the appellant that on 01.02.1990, a meeting of the Central Staff Committee was held in the chamber of the Administrator, Agricultural Produce Marketing Committee (APMC), Azadpur under the charge of the Chairman to consider the case of workers working on daily wages in the APMC. The appellant had also appeared before the Committee on the very same day. It is also the case of the appellant that after the interview, his name was included in the panel on 28.03.1990 for appointment against the post of Sub Inspector/Fee Collector/Auction Recorder by Delhi Agricultural Marketing Board (DAMB). After the approval of the Secretary, DAMB as required under Section 32 (2) of the Delhi Agricultural Produce Marketing (Regulation) Act, 1976. According to the notings obtained under RTI Act, on the basis of sanctioned posts and SIU reports, 86 posts were sanctioned in the grade of Sub Inspector/Fee Collector for APMC, out of which 74 posts were filled up on regular basis of Sub Inspector/Fee Collector and one personal was working on Ad hoc basis against one of the aforesaid sanctioned posts. Out of the remaining 11 posts of Sub Inspector/Fee Collector, 7 officials were appointed on regular basis against the posts they were initially appointed for, however, they were directed to continue to work on the existing posts on ad hoc basis till further orders. Resultantly, 11 posts of Sub Inspector/Fee Collector were laying vacant in the APMC as on 26.12.1997. It is also the case of the appellant that against a sanctioned vacant post of Sub Inspector and on recommendation of the Central Staff Selection Committee, the department gave an offer letter to the appellant, offering him the post of Sub Inspector in APMC,

Azadpur on 02.01.1998, copy of which has been placed. However, the offer was withdrawn on 18.03.1998 based on a complaint pending against him. A show cause notice was issued on 24.03.1998 alleging bribe of Rs.2/- from a truck driver. Reply was submitted on 30.03.1998. The services of the appellant were terminated on 27.10.1990. A writ petition being W.P.(C) 5515/1998 filed by the appellant herein was dismissed by a learned Single Judge of this Court vide an order dated 22.07.2013, while placing reliance on the decision rendered by the Apex court in the case of the *Secretary, State of Karnataka & Others vs. Umadevi & Others* reported in **2006 (4) SCC 1**. This order was assailed by the appellant herein by filing LPA No.104/2014; which was allowed. The Division Bench, quoted the order of the Supreme Court of India and remanded the matter back for a fresh hearing as the Single Judge in the order dated 22.07.2013 had not taken note of the judgment of the Supreme court of India. Thereafter, the learned Single Judge reheard the matter and on 06.03.2017 dismissed the same on the ground that the department did not rightly regularize the services of the petitioner/appellant as he did not have an unblemished record and was found guilty of taking bribe. A review was also filed, which was also dismissed by an order dated 15.05.2017. The appellant, who has appeared in person, submits that he had joined the services of the respondent in the month of August, 1985 and the judgment of the Supreme Court dated 30.08.1988 would apply to him which is also evident from the fact that he had appeared before the Central Staff Selection Committee in the meeting held in the chamber of the Administrator, APMC, Azadpur. On 01.02.1990, he was selected

after the interview conducted on 28.03.1990. He was given an offer letter on 02.01.1998, copy of which has been placed on record. He further submits that the allegation of accepting Rs.2/- as bribe are unsubstantiated, although, a show cause notice was issued to him. He submits that at the time when the show cause notice was issued, he had put in almost 13 years of the services and the same could not have been discontinued without following the due process of law.

2. Ms.Avnish Ahlawat, learned counsel for the respondents, has strongly opposed this appeal. She submits that learned Single Judge has rightly rejected the writ petition. Counsel submits that the appellant was a daily wager; the order of the Supreme Court would not apply to a person who was caught taking bribe; no formal enquiry was required as he was a daily wager and not a permanent employee. A show cause notice was issued to him; his services were discontinued.
3. Attention of the court is drawn to para 3 of the counter affidavit filed before the Single Judge, which read as under:

“3. That the petitioner joined as a daily wager and was continuing. As per order of the Hon’ble Supreme Court it was agreed that daily wagers will continue and their services will not be terminated till their services are regularized or the Selection Committee finds them unfit for retention.”

4. We have heard the appellant in persona and Ms.Avnish Ahlawat, counsel for the respondents.
5. Before considering the rival submissions, we may reproduce the Memorandum dated 29.01.1990 (page 60), which reads as under:

“AGRICULTURAL PRODUCE MARKET COMMITTEE
D-4, PANCHWATI: AZADPUR: DELHI: 110033.

No.434

Dt: 29.1.90

MEMORANDUM

Meeting of the Central Staff Selection Committee shall be held in the chamber of Administrator, APMC, Azadpur under the chairmanship of Chairman, DAMB on 1.2.00 at 12.00 noon to consider the cases for regularisation of services of the employees working on adhoc/daily wages basis in APMC, Azadpur. Shri/Smt./Kumari S.K.Tripathi S/o, W/o, D/o Dina Nath is required to appear before the CSSC on 1.2.00 at 12.00 noon alongwith certificates in original in respect of his/her educational/other qualifications. Candidates belonging to S.C./S.T. are also advised to submit their requisite certificates in original for inspection. Attested duplicate copy is to be deposited in this office.

(S.N.YADAV)

DEPUTY SECRETARY (ADMN.)

Sh./Smt./Kumari S.K.Tripathi
S/o, W/o, D/o Dina Nath
Branch Narela

6. Photocopy of the note sheet has been filed, which is extracted below:
(page 63)

“SUB:-REGULARISATION OF DAILY WAGES EMPLOYEES:

This is regarding regularization of services of employees working on daily wages basis against the post of SI/FC/AR. A panel was made by the CSSC for appointment against aforesaid post by the DAMB after the approval of secretary, DAMB, as required under Section 32 (2) of the DAPM Regulation) Act, 1976. The same have been conveyed by DAMB in their communication dated 28.03.90 copy at flag 'AT 'F'. The facts of the post are as under:-

1. On the basis of sanctioned posts and SIU report 86 posts were sanctioned in the grade of SI/FC. For APMC, Azadpur.
2. Out of these 86 posts the following posts have been filled-up:-
 - (a) 74 posts were filled up on regular basis of SI/FC, and: one official is presently working on Adhoc basis against the aforesaid sanctioned posts.
 - (b) Consequent of Adhoc promotion of 7 officials to the post of SI/FC which was conveyed by the DAMB in their communication No. F-(53)/1/86-DAMB/Estt./1298, dated 20.3.87. Copy of the Minutes proceedings of the CSSC held in the office of DAMB on 11.2.87 for consideration of the employees of APMC, Azadpur for regular appointment to the post of SI/FC as flag 'x'. In the said Minutes CSSC have recommended at-pages No. 2 on para No. 6 that said "7 adhoc official be appointed on regular basis against the posts of Gate/Man each to which posts he/she was initially appointed. However, they shall continue to work on the existing posts on Adhoc basis till further orders". '

Hence these 7 posts cannot be treated as filled-up against the posts of SI/FC. Result of which presently 11 posts of SI/FC are laying vacant in this committee.

- (c) In the panel which was communicated by the DAMB the officials were whose names are appearing (at page No. 4865 of panel) from Sr. No. 23, 24, 28, 32, 33, 34, 35 86 36 are still working on Daily wages basis against the Post of SI/FC. The total number of such employees are 8, whereas, the vacant posts are 11 in the aforesaid grade.

In this connection it is mentioned that the Central Staff selection Committee, have been decided/recommended in the panel that "The Administrator, APMC, Azadpur may appoint the aforesaid officials on regular basis as and when regular become available.

In view of the position above. Administrator being the appointing authority is requested to accord his approval for issuance of appointment letters on regular basis against the post of sub-Inspector/Fee collector to the following daily wages officials, whose names are appearing in the panel:-

S.No.	Name of the officials
S/Sh.	

1. Suraj Mal, SI/FC (DW)
2. S.K. Tripathi, -do-
3. Satpal Singh, -do-
4. Smt. Santra Devi -do-
5. Smt. Rajdulari, -do-
6. Narender. Singh, SI/FC (DW)
7. Smt. Sarita, -do-
8. Sanjeev Kr. Singh, -do-

Submitted please.

(Sd)
26/12/97
(DHARAM SINGH)
M.S. (ADMN)

A S (A) On leave
DS (A)

May be approved pl.

Sd/-
Dated 26/12/97

J/S(A)

2. Please indicate the date of regular vacancies
 - (ii) Please put up also a suitable draft letter to be send to DAMB.
 - (iii) Please obtain Vig. Clearance.

29/12/97

AS (A)

Added

“As per observation of JS (A).

(i) In this connection it may be stated that posts of SI/FC are vacant from the date of promotion in grade of Mandi Supervisor i.e. 20.06.97. therefore, the said 8 officials of DW may be regularized w.e.f. 20.6.97.

(ii) Accordingly, a draft letter addressed to DAMB is placed opposite for approval pl.

(iii) In this regard it is submitted that Vig. Clearance and work and conduct report have been obtained and report of the said 8 officials found/work is satisfactory.”

Dated 29.12.97

7. The relevant part of the memorandum dated 02.01.1998 is reproduced as under: (page 71)

“MEMORANDUM

On the recommendation of the Central Staff Selection Committee and with the previous approval of the Secretary, Delhi Agricultural Marketing Board, Sh. S.K Tripathi, S/o D.N.Tripathi is offered the post of Sub-Inspector in APMC, Azadpur on the following terms and conditions:-

1. The appointment of Sh. S.K.Tripathi would be subject to the provisions of Delhi Agriculture Marketing Committee (Service) Regulation, 1978 as amended from time to time.
2. The pay shall be in the scale of Rs. 950-1500(Pre-revise)(Revised) plus other allowances admissible under aforesaid service regulations.
3. He will be on probation for a period of two years from the date of appointment which can be extended which can be extended if his conduct and performance is not found satisfactory in the opinion of the appointing Authority.
4. The post offered is not pensionable.
5. The post is temporary but likely to be continued. In the event of its permanent, his claim for appointment thereto in a substantive capacity will be considered in accordance with the rule in force.
6. The appointment maybe terminated at any time by one month's notice given by either side viz. the appointee or the appointment authority, without assigning any reason. The appointing authority, however reserves the right of terminating the services of the appointee forthwith before expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

7. In case he is appointed against the post of duties of which requires him to handle cash or stores, he will have to furnish security/fidelity/bond of the amount to be determined by the appointing authority.

8. Other conditions of the services will be governed by the relevant rules and orders in force from time to time.

.....”

8. The objective of reproducing the above documents is simply to show that the appellant was duly considered for regular employment in compliance with the direction of the Supreme Court based on a writ petition being W.P.(C) No.5515/1998 (page 48).
9. The only impediment as per the appellant for granting regularization is the allegation of taking bribe of Rs.2/-. Although there is force in the submission made by the counsel for the respondents, since the appellant was not a regular employee, it was not necessary to hold a regular enquiry. However, although this submission may seem attractive but is not acceptable for the reason that the appellant had put in 13 long years of service; no other complaint has been brought to the notice of the Court. Additionally, the order of the Supreme court is crystal clear with regard to the regularization of 132 daily wagers. A submission was made before the Supreme court that steps would be taken as early as possible for the committee to regularize the services of these remaining workers and an assurance was given that the services of these 132 persons would not be terminated unless their cases for regularization are considered. The effect of such a statement being made before the Supreme court would place these 132 workmen including the appellant herein on a different platform and the appellant could not have been equated with a wager who has put in a rather small period of service.

We do not agree with the view of the Single Judge that the principles of natural justice was complied with as a show cause notice was given. The services of the appellant could not have been discontinued simplicitor on the basis of a show cause notice. The order of 27.10.1998 disengaging the services of the appellant does not record enough reasons or does not disclose as to whether any statements were recorded of the truck driver or whether any independent witness was present when the raid was conducted. There is no indication as to how bribe money has been dealt with, note of which makes the order dated 27.10.1996 not sustainable in the eyes of law and rather suspicious in nature. The next question which arises for our consideration is the question of back wages. The the Supreme Court in the case of ***the Management of Regional Chief Engineer PHED Ranchi vs. Their Workmen Rep. by District Secretary*** reported at ***2018 SCC online SC 1587*** categorically held that the employees will only be entitled to full back wages, if they could prove that they have not been gainfully employed. Back wages could not be awarded by the Court as of right to the workman, the Court as may deem fit may decline to award the back wages in its entirety whereas in some, it may award partial wages depending upon the facts of each case by exercising its judicial discretion as per the facts and evidence. Accordingly, we are of the view that the appeal should be allowed directing the respondents to pay 50% back wages. Ordered accordingly. The termination letter dated 27.10.1998 is quashed. The appellant does not press the prayer of reinstatement.

10. The appeal is allowed in the above terms.

C.M.29162/2017 (stay)

11. In view of order passed in the appeal, the application stands disposed of.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 07, 2019

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