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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th October, 2020
+ **W.P.(C) 7207/2001**
M/S LOGITRONICS (P) LTD. Petitioner
Through: Mr. Vinay Sabharwal, Advocate.
(M:9810080522)
versus
RAMESH KUMAR SOOD & ORS. Respondents
Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. This is a petition filed in 2001 challenging an award passed by the Labour Court in I.D. No. 340/1993 titled *Sh. Ramesh Kumar v. The Management of M/s Logitronics (P) Ltd.* on 12th January, 2000. Vide the impugned award, the termination of Respondent No.1 was held to be illegal and the Petitioner was directed to reinstate Respondent No.1 with 50% back wages.
3. On 18th March, 2005, the application under Section 17-B of the Industrial Disputes Act, 1947 (*hereinafter, "ID Act"*) was disposed of as allowed and the last drawn wages were directed to be paid to Respondent No.1 within four weeks. However, as per order dated 22nd October, 2019, Respondent No.1 had stopped appearing in the matter. On 7th July, 2020, Mr. Vinay Sabharwal, ld. counsel for the Petitioner had appeared and submitted that he did not have any instructions in the matter. The matter was, thereafter, adjourned to 27th August, 2020.
4. A synopsis has been filed on behalf of the Petitioner, which shows

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that the Petitioner industry has been closed with effect from 12th May, 1999. Submission of the Petitioner is that the duties of Respondent No.1 were managerial and supervisory in nature and he was, thus, not a 'workman' as defined under Section 2(s) of the ID Act. Reliance is placed upon the nature of work which Respondent No.1 was rendering. Respondent No.1 was a departmental head, who was in-charge of preparation of final accounts which were written by other employees and there were several employees, who were working under his control and supervision. The second issue is as to whether the termination is covered under Section 2(oo)(bb) of the ID Act and constitutes 'retrenchment'. Reliance is placed on ***M.P. Electricity Board & Anr. v. Dinesh Kumar Agrawal, 2001 SCC OnLine SC 73, Netaji Subhash Institute of Technology v. Dilkhush Bairwa & Anr., 2006 LLR 847 and State of Maharashtra, through District Civil Surgeon & Anr. v. Mehboobkhan S/o Rasool Khan Pathan, 2011 LLR 750*** to argue that if the termination is as per the terms stipulated in the contract, the same does not amount to 'retrenchment'.

5. None appears for the Workman even today. On the basis of the record, it is clear that the Workman has lost interest in this matter.

6. A perusal of the impugned order dated 12th January, 2000 shows that the Presiding Officer, Labour Court-VIII has come to the conclusion that Respondent No.1's duties were not supervisory or administrative in nature. A perusal of the cross-examination of MW-1, Shri Atul Dube, Manager Account, shows that Respondent No.1 was Assistant Manager of Accounts and he had the power to appoint workers to complete the accounts work, however, he never appointed anybody in his tenure. MW-1 could not produce any record by virtue of which Respondent No.1 may have been

conferred the power to appoint officials and MW-1 was unable to give any names of persons, who were working under Respondent No.1. As per MW-1, Respondent No.1 used to guide people for technical work and do technical account work. He used to do the supervisory work by his own hand by correcting work etc. He had not recruited or removed anyone and had not initiated any disciplinary action against anyone. Even as per the statement of MW-2, Mr. V.K. Mehra, Office Assistant, he himself was not doing any accounts work, Respondent No.1 would check his typing and the balance sheet was prepared by Respondent No.1. The Labour Court has also relied on several judgments to hold that since the predominant nature of duties performed by Respondent No.1 were clerical in nature i.e. maintaining the accounts and checking the accounts prepared by others, he was a '*workman*' as defined under Section 2(s) of the ID Act. Thus, it cannot be said that Respondent No.1 was working in a managerial capacity. The finding of the Labour Court that Respondent No.1 was, in fact, a '*workman*', thus, does not deserve to be interfered with.

7. Insofar as the second issue is concerned, as to whether Respondent No.1's termination was illegal, the statement of Respondent No.1 was that he was terminated without any notice and without any inquiry. In fact, the witness of the management – MW-1, has admitted that Respondent No.1 had been discharged from his service with one month's pay, without any inquiry. It is also admitted that he was not given any retrenchment compensation.

8. On this issue, the stand of the Management is that this case is covered under the exception to Section 2(oo)(bb) of the ID Act as, according to clause 21 of the Standing Order, Respondent No.1 could be terminated with one month's notice or one month's pay in lieu of notice. The said clause

reads as under:

“21. Termination of Service by Industrial Establishment

- a) For terminating the employment of a permanent workman, notice in writing shall be given by the employer one month's notice or one month's pay as the case may be paid in lieu of notice.*
- b) No temporary workman whether monthly rated weekly rated or piece rated and no probationer shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the service of temporary workman shall not be terminated as a punishment unless he has been given an opportunity to explain the charges of misconduct alleged against him in the manner prescribed in standing orders No.25(c).*
- c) Whether the employment of any workman is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of second working day from the day on which his employment was terminated in accordance with the provisions of the payment of Wages Act for the time being in force.”*

9. The Labour Court has relied on the judgment in ***D.K. Yadav v. J.M.A Industries Ltd., LLR 1993 SC 585***, to hold that on the basis of the Standing Order, the termination of services of Respondent No.1 could not be effected as the same would be violative of the principles of natural justice.

10. The Id. counsel for the Petitioner has cited ***M.P. Electricity Board (Supra)***, ***Netaji Subhash Institute of Technology (Supra)*** and ***State of Maharashtra, through District Civil Surgeon & Anr (Supra)***. The facts and circumstances in those cases are completely different inasmuch as none of them relate to a Standing Order as in the present case. In ***M.P. Electricity Board (Supra)***, there was a stipulation in the appointment letter itself that if

the employee did not pass the written test, he would be liable for termination. In *Netaji Subhash Institute of Technology (Supra)*, there was a letter of appointment which clearly stated that the post was temporary and the employee was being employed on an ad-hoc tenure. Though, the ad-hoc tenure was extended by means of an office order, it continued to be governed by the initial letter of appointment as the same was for a specific period. Thus, in both these cases, the Court has held that the termination would not constitute retrenchment under Section 2(oo).

11. A perusal of the standing order in the present case shows that the same is a draft Standing Order. The law in *D.K. Yadav (Supra)* has been followed thereafter in *Lakshmi Precision Screws Ltd. v. Ram Bhagat, AIR 2002 SC 2914* wherein the Supreme Court has held that the doctrine of natural justice is an inbuilt requirement in Standing Orders. Thus, the Labour Court is right in holding that the termination with immediate effect or even with one month's notice would be contrary to law. Accordingly, the present writ petition is devoid of any merit and the same is dismissed.

12. The employee has, however, not shown any interest in defending the present writ petition during its pendency. The writ was filed way back in 2001 and there have been numerous defaults by Respondent No.1. Thus, the period during which the writ petition was pending before this Court, the Respondent No.1 would not be entitled for any benefits or payments whatsoever.

PRATHIBA M. SINGH, J.

OCTOBER 13, 2020/dk/T/A

(corrected and released on 23rd October, 2020)