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

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*Decided on: 12.02.2020*

+ **W.P.(C) 5107/2016**

**JAGDISH CHANDER**

..... Petitioner

Through: Mr. D.P. Singh, Adv. with Mr. Shantanu  
Sharma, Advs.

versus

**ALL INDIA INSTITUTE OF MEDICAL SCIENCES.. Respondent**

Through: Mr. Tushar Gupta, Adv. with  
Ms. Soumya Mehrotra, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. This petition impugns the award dated 05.01.2016 passed by the learned Labour Court in I.D. NO. 72/10/01. It is the case of the petitioner that he had worked for 12 years with the respondent, therefore, he should have been regularized. What is to be seen is that policy of regularization of the aforesaid scheme came in 1999 whereas services of the petitioner had already been terminated on 01.08.1997.

2. The learned Labour Court has dealt with the issue as under:-

*“Issue No. 3*

*9. Claimant's case is that he had started working with the management w.e.f. 22.02.1985 at the last drawn salary of Rs.*

2500/- per month and his services were terminated illegally on 01.08.1997. He did not work with the management as adhoc employee, but as a regular employee. On the other hand, case of the management is that the claimant had not worked with it since 22.02.1985 as he was initially appointed in the year 1995 in a project, namely, National Poison Information Centre vide memorandum dated 19.07.1995. He was not a regular employee of the management. He was hired for a fixed term for a particular purpose. When his term was over, remove his services came to an end automatically on 01.08.1997. The management has termed the certificates Ex. WW 1/2 and Exhibit WW 1/3 as forged and fabricated.

10. In support of his case that claimant was appointed by the management first time on 22.02.1985, there is a document i.e. letter Ex. WW1/2 dated 17.07.1995 issued by Dr. S.D. Seth, Supervisor and Head, Department of Pharmacology, AIIMS, New Delhi - 29. It is mentioned in that document that claimant had worked with him as Animal Attendant in various I.C.M.R. projects on 22.02.1985 to 04.07.1985. In similar such certificates exjj WW1/3 dated 31.05.1997 issued by Mr. S.D. Seth, it is mentioned that claimant again joined him in the project "Poison Information Centre" and worked from 5.7.1995 to 31.5.1995. These documents have been disputed by the management saying that those are fake. Both these documents have been issued on the letter head of the management. Exhibit WW 1/2 bears the s.eal of Dr. S.D. Seth. It has been admitted by MW1 in cross-examination that Dr. S.D. Seth was working as a Doctor with the management. In this background, the onus had shifted upon the management to prove those documents as forged and fabricated. In this regard, it should have examined either Dr. S.D. Seth or some other employee to say that those documents do not bear signatures of Dr. S.D. Seth, but it failed to examine any of them. So, the documents Exhibit WW V1/2 and WW 1/3 are taken as genuine. These documents prove the employment of the claimant with the management since 22.02.1985. These documents prove one additional fact also that the claimant had worked with the management on project basis. Working of. the claimant with the management for fixed deposit on project basis has further been

*proved by extension letters from Exhibit WW1/4 to Exhibit WW1/8.*

*As his employment was on a fixed term basis, the same came to an end on 28.02.1995 vide termination of service letter Exhibit WW 1/9 dated 6.2.1995. There is an admission by the claimant in the form of resignation letter Exhibit WW 1/12 dated 4.7.1995 that he used to work with the management on project basis. It is mentioned in the resignation letter that he was resigning from the post of Lab Attendant in Dabur Project titled as "Bioavailability studies Medical Plants:, DIL-107. His association with the management had started from 22.02.1985 and he himself had resigned on 04.07.1995. He cannot complain that his services were terminated illegally on 04.07.1995 because such services came to an end due to his own resignation letter Exhibit WW 1/12.*

*His fresh engagement with the management came into existence vide fresh appointment letter Exhibit 1/13 dated 19.07.1995 in a project titled as "Setting up of Financial Asstt. Regarding." Funded/sponsored by M.E.F.-213 as Lab Attendant at a fixed/consolidated salary of Rs. 2022/- per month for a period of three months. As per that letter, the project was to remain in existence from 05.07.1995 to 31.12.1997. His services were extended for six months vide letter Exhibit WW1/18 dated 23.02.1996 from 01.03.1996 to 31.08.1996. The second extension came for six months vide letter Exhibit WW 1/19 dated 27.08.1996 from 01.09.1996 to 26.02.1997. Last and final extension was vide letter Exhibit WW1/21 dated 19.02.1997 for six months from 01.03.1997 to 31.08.1997. The registration letter Exhibit WW 1/12 proves that the claimant himself had broken his relationship with the management. This relationship was again established vide fresh appointment letter Exhibit WW 1/13. The appointment letter Exhibit WW 1/13 shows that his appointment was for a particular purpose and for a specific term of three months. Such term was extended by three letters for six months each. His term was to expire on 31.08.1997, but his services were terminated on 01.08.1997. Claim of the management is also that services of the claimant came to an end on 1.8.1997. So, the*

*services of the claimant were terminated by the management 31 days in advance. It is held that appointment of the claimant with the management was on adhoc basis and that case of the management is covered under Section 2 (oo) (bb) of the I.D. Act, 1947. This Issue is decided in favour of the management and against the claimant.”*

3. The learned counsel for the petitioner relies upon the dicta of this Court in *All India Institute of Medical Science & Ors. Vs. Om Prakash & Ors.*, 2002 (65) DRJ 80, wherein the Court held that the employees who had put in 10 years of service at AIIMS, ought to be regularized. However, the operative portion of the judgment is that they should have been in continuous uninterrupted service/employment of AIIMS. In the present case, the petitioner's services stood already terminated. He has not been able to prove that his services were terminated illegally. Indeed, the finding of the learned Labour Court too is not to this effect. It only says that his services were hurriedly terminated. The hurry in the termination was that instead of tenure/engagement coming to an end, a month later his services were terminated i.e. on 01.08.1997. Even if the project ended a month later, it would not have given the petitioner any right for regularization of services because there was no such policy. The policy he seeks to rely upon came two years later. He was employed on a project and his requirement was co-terminus with the project. In any case, his employment was only in terms of the contract which was related to the project and termination of his services were in terms thereof. The learned Labour Court has dealt with this issue as under:-

*“12. Ld. ARW submitted that some workers who had completed 10 or more years with the management had filed a writ petition*

*in the Hon'ble High Court of Delhi and the High Court had directed the management to regularize service of such petitioners and not to remove workers who had completed 10 years so as -to enable them 15 years and thereafter, to regularize them. The management did not follow the fiat of the Hon'ble High Court and terminated the services of the claimant. In this regard, he relied upon the Judgment of the High Court passed in the case titled as Pusp David vs. The Director AIIMS, CWP No.6663/2001 decided on 22.05.2002 by the Hon'ble High Court. Admittedly, the claimant was no one of the writ petitioners of the cited case. Services of the claimant had come to an end on 01.09.1997 whereas the said Judgment was passed by the High Court on 22.05.2002. So, termination of services of the claimant had taken place about 5 years ago of the cited Judgment. So, the claimant cannot take protection of that law.*

*13. It has already been held in Issue No. 3 that case of the management was covered under Section 2 (oo)(bb) of the I.D. Act, 1947 because services of the claimant were availed by the management for a particular project on a fixed term which was extended three times. His tenure was to come to an end on 31.08.1997, but his services were terminated on 01.08.1997. So, termination of his services by the management was 31 days in advance and at that time, the project was still in progress. So, his services have been terminated illegally. This issue is decided in favour of the claimant and against the management.*

#### *Relief*

*14. The claimant had worked with the management since 1985 to 1997. First time his services were terminated vide termination letter Exhibit WW 1/9 dated 06.02.1995 w.e.f. 28.02.1995. Once he resigned vide resignation letter Exhibit WW 1/12 dated 04.07.1995. As per last extension letter Exhibit WW 1/12 dated 04.07.1995. As per last extension letter Exhibit WW 1/21, his service was to expire on 31.08.1997. The management hurriedly terminated him on 01.08.1997. So a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousands only) is granted to him. The management is directed to pay the said amount to the*

*workman within a month from the date of publication of this award failing which it shall be liable to pay interest @ 9 percent per annum from today till realization. Reference is answered accordingly. Award is passed accordingly.”*

4. In view of the above, no ground is made out for interfering with the impugned order.
5. There is no merit in the petition. It is accordingly dismissed.

**NAJMI WAZIRI, J**

**FEBRUARY 12, 2020**

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