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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 06.09.2022
Pronounced on: 20.09.2022

+ W.P.(C) 13869/2004

SMT. SANTOSH DEVI

..... Petitioner

Through: Ms. Meghna De, Advocate.
versus

GURU TEG BAHADUR HOSPITAL
SHAHDARA, DELHI

..... Respondent

Through: Ms. Avnish Ahlawat, Standing
Counsel, GNCTD with Ms. Tania
Ahlawat, Mr. Uday Singh Ahlawat,
Ms. Aliza Alam and Ms. Laavanya
Kaushik, Advocates.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. By the present petition, the Petitioner lays a challenge to the award dated 08.07.2003 passed by the Labour Court-I, Karkardooma, Delhi in I.D. No. 308/98 titled as "*The management of M/s. Guru Teg Bahadur Hospital Vs. Its workman Smt. Santosh Devi*" ("**Impugned Award**"). Vide the Impugned Award dated 08.07.2003, the learned Labour Court was pleased to answer the reference in favour of the Respondent/Management and against the Petitioner/Workman.



2. It is the case of the Petitioner/Workman that she was engaged by the Respondent/Management on muster roll as a Safai Karamchari w.e.f 17.12.1988. Thereafter, the service of the Petitioner/Workman was terminated w.e.f. 17.04.1993 without assigning any valid reason thereof. After 4 years of the alleged termination, on 31.12.1997, the Petitioner/Workman through her Union issued a legal demand notice to the Respondent/Management. Subsequently on 10.06.1998, the Petitioner raised an industrial dispute before the Conciliation Officer.
3. On failure of the conciliation proceedings, the Government of National Capital Territory of Delhi vide Notification dated 20.08.1998 referred the dispute to the learned Labour Court for adjudication under Section 10(I)(C) & 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as “**I.D. Act**”) with the following reference:

“Whether the services of Smt. Santosh Devi have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?”
4. The Petitioner filed Statement of Claim before the learned Labour Court alleging violation of 25F, G & H of the I.D. Act read with Rules 76, 77 and 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as “**Rules**”).
5. The Respondent/Management filed their Written Statement before the learned Labour Court denying that the Petitioner/Workman worked with them for a period of 240 days in a calendar year. It is



the case of the Respondent/Management that the Petitioner/Workman worked in 13 different spells on muster roll w.e.f 01.01.1990 without completing 240 days in a calendar year. It is the case of the Respondent/Management that since the services of the Petitioner/Workman was not terminated or retrenched, there is no violation of 25F, G & H of the I.D. Act.

6. Both the parties led their evidence to substantiate their respective cases. The Petitioner examined herself as WW-1. On behalf of the Respondent/Management, Dr. B.R Chandra, Additional MS, GTB Hospital was examined as MW-1.
7. After examining the evidence on behalf of both the parties, the learned Labour Court was pleased to answer the reference in favour of the Respondent/Management and against the Petitioner/Workman. The learned Labour Court *inter alia* held that the Petitioner/Workman failed to prove that her services were terminated illegally or unjustifiably or the management acted in violation of Section 25F, G & H of the I.D. Act read with Rules 76, 77 and 78 of the and Section 30 of the Delhi Shops and Establishments Act, 1954.
8. The present Writ Petition is preferred by the Petitioner challenging the Impugned Award.

SUBMISSIONS ON BEHALF OF THE PETITIONER

9. Ms. Meghna De, learned counsel for the Petitioner/Workman submitted that the Respondent/Management resorted to unfair labour practice of engaging workmen, such as the Petitioner/Workman herein, against jobs of permanent nature but without conferring upon



them the benefits of permanency. She submitted that though the Petitioner/Workman was working against a job of permanent nature, the Respondent/Management had deliberately recruited her on a muster roll.

10. It was stated by learned counsel that the Petitioner/Workman was working with the Respondent/Management from 17.12.1988 to 17.04.1993 except for the days she was not allowed to perform her duties. It was asserted that the Impugned Award suffers from infirmity on the ground that the Respondent/Management failed to produce the muster roll. The learned Labour Court failed to appreciate that under Section 25D of the I.D. Act, every employer is under a statutory duty to maintain a muster roll. Thus, an adverse inference against the Respondent/Management should be drawn by this court for not producing the muster roll.
11. The learned Labour Court failed to appreciate that Rule 77 states that the employer shall prepare a list of all the workmen from which retrenchment is contemplated according to the seniority of their service. It was averred by learned counsel for the Petitioner/Workman that no seniority list was displayed by the Respondent/Management and persons juniors to the Petitioner/Workman were retained in service. Furthermore, the Respondent/ Management violated the provision of Section 25G of the I.D. Act.
12. It was contended that since the Petitioner/Workman had put in more than 240 days of service, she is entitled to the protection of Section



25F of the I.D. Act. The termination of her service is violative of Section 25F, G & H of the I.D. Act read with Rules 76, 77, 78. Hence, the Impugned Award should be set aside being illegal and perverse.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

13. Ms. Avnish Ahlawat, learned counsel for the Respondent/Management states that the Award suffers from no infirmity and illegality and the learned Labour Court has rightly held the Award to be in favour of the Respondent/Management. The Petitioner/Workman had failed to prove that she had continuously worked for a period of 240 days during 12 calendar months and also that she is a permanent employee of the Respondent/Management or has worked with the Respondent/Management as a regular employee.
14. Learned counsel further asserted that no one by the name of Smt. Santosh Devi had ever worked as muster roll worker w.e.f. 17.12.1988. The Petitioner/Workman has made vague averments because in the case of muster roll worker, no service book or service record is required to be maintained. They are employed only for a limited period for a specific purpose. A muster roll worker is supposed to be out of job automatically as soon as his or her job is finished. Therefore, there is no requirement of notice, as also observed by the learned Labour Court. Thus, there is no violation of Section 25F of the I.D. Act.



15. Learned counsel, placing reliance on the case of *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan* reported as (2004) 8 SCC 161, corroborated her submission that mere non-production of muster roll does not substantiate the fact that the workman had worked for more than 240 days as claimed. She further relied on *Surendranagar District Panchayat v. Dahyabhai Amarsinh*, (2005) 8 SCC 750; *Municipal Corporation Faridabad v. Siri Niwas*, (2004) 8 SCC 195; *Manager, RBI v. S. Mani & Ors.*, (2005) 5 SCC 100.
16. The Petitioner/Workman failed to bring on record any other relevant document apart from the copy of the application made to the Respondent by her for payment of her wages for the period from 27.02.1991 to 28.03.1991. Furthermore, the Petitioner/Workman, in her cross-examination, admitted that she was registered with the Employment Exchange and Identity Card (Exh. WW-1/9) to that effect was given to her by the Employment Exchange. It was further admitted by the Petitioner in her cross-examination that she used to work as per specific requirement. It is apparent from the cross-examination of the Petitioner/Workman that she was not permanently employed with the Respondent/Management.

LEGAL ANALYSIS

17. Heard the arguments advanced by both the parties and examined the Labour Court Record and the Judgments relied upon by the parties. The question to be examined in the present matter is whether the services of the Petitioner/Workman were terminated illegally or



unjustifiably. It is the case of the Petitioner/ Workman that she was engaged as a muster roll employee by the Respondent/Management w.e.f 17.12.1988 and her services were terminated w.e.f 17.04.1993 without assigning any valid reason. There is no document placed on record to substantiate this fact. The only document placed on record by the Petitioner/Workman relating to her work with the Respondent/Management was a copy of the application made by the Petitioner/Workman to the Respondent/ Management for payment of her earned wages for the period from 27.02.1991 to 28.3.1991 (Exh.WW-1/6).

18. The Petitioner/Workman in her evidence categorically deposed as follows:

“...It is correct that the management used to call as and when there was any work on day-to-day basis. I used to work only through employment Exchange. It is correct that if the Employment Exchange do not ask in to go to work with the management. I do not went of my own. It is also correct that I used to work as per the specific request and thereafter the management against used to call for work as and when there is any requirement. It is also correct that there is no letter or notice issued by the management for termination of the work. It is also correct that I am not a permanent employee the management I have not worked with the management as regular employee. It is also correct that I was paid the minimum wages on paid to the muster roll workers by the management.”

19. It is the case of the Respondent/Management that the Petitioner/Workman worked in 13 different spells on muster roll w.e.f 01.01.1990 without completing 240 days in a calendar year.

The statement of the Petitioner/Workman is in consonance with the



stand of the Respondent/Management. It is clear from the cross-examination of the Petitioner where she had herself admitted that she was working 'only' through Employment Exchange. There is no evidence on record, which has been brought by the Petitioner to establish that she has been continuously employed with the Respondent/ Management. She deposed that she used to report for work as and when being called by the Respondent/Management. She failed to bring any evidence to corroborate her claim that she has worked for 240 days. Exhibit WW1/6 also proves that she has worked only for a particular span of period from 27.02.1991 to 27.03.1991. No proof of receipt of salary or wages or any record was produced; no co-worker was examined.

20. Hence, it is evident that the Petitioner/Workman was not working with the Respondent/Management continuously as claimed by her. As and when there is requirement of work, she used to perform her job as a muster roll employee on the basis of the specific request of the Management. From the evidence of the Petitioner/Workman, it is clear that she was engaged for specific work for short terms.
21. Further, there is an unexplained delay of four years in raising the legal demand notice dated 31.12.1997. If it is a case of illegal termination, there would have been legal action immediately thereafter. Hence, from the overall analysis of the facts and circumstances, it is clear that the service of the Petitioner/Workman was not terminated as alleged by her. The period for which she was engaged was over and hence there is no work for her thereafter.



22. The Petitioner/Workman also alleged violation of 25 F, G & H of the I.D. Act. In order to attract Section 25 F of the I.D. Act, the workman has to be in continuous employment with the management for period of not less than one year. The Hon'ble Supreme Court in ***Krishna Bhagya Jala Nigam Ltd. Vs Mohammed Rafi*** reported as (2009) 11 SCC 522 has elaborately explained the aspect of burden of proof in such cases and have cited ***R. M. Yellatti Vs Asstt. Executive Engineer*** reported as (2006) 1 SCC 106 which reads as:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-



production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

23. The Petitioner miserably failed to prove that she worked for 240 days in a calendar year. Hence there cannot be any violation of Section 25F of the I.D. Act.
24. In order to attract Section 25 G & H of the I.D. Act, there has to be retrenchment of the workman. The Petitioner/Workman was a muster roll employee engaged on the basis of the exigency of work. She had been paid her wages for the period of her engagement. Hence her disengagement after the completion of her allotted work cannot be termed as retrenchment under Section 2 (oo) of the I.D. Act. Hence Section 25H & G are also not attracted.
25. *Qua* the aspect of furnishing a seniority list, this court is bound by the observation of the Hon'ble Supreme Court in ***Surendranagar District Panchayat v. Dahyabhai Amarsinh*** reported as (2005) 8 SCC 750, the relevant portion of which has been reproduced herein below as:

“In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority,



no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been proved.”

26. In view of the settled position of law, the plea taken by the Petitioner that there has been a violation of Section 25F, G & H of the I.D. Act does not hold any ground. This court is in consonance with the view of the learned Labour Court wherein it had observed that:

“12. ...But admitted during the cross examination that she used to go to work only through employment exchange as and when asked by them to the management. The claimant further admitted that she used to work as per the specific requirement and thereafter the management again used to call for work as and when there was any requirement. She also admitted that her no notice or letter was issued by the management for termination of work. She also admitted that she was not permanent employee of the management and have not worked with the management as a regular employee. It is also so clear from the interview letter proved by the claimant herself as Ex. WW1/5 when she was called for interview on 17.4.93 for the post of Safai Karamchhari in the pay scale of 750-910 with certain certificates. In facts, admission of the claimant get substantiated from Ex. WW1/6 showing that she has worked for a particular span of period from 27.2.91 to 27.3.91. No other documents on record have placed and proved by the claimant to show that the claimant worked with the management continuously from 17.12.88 to 17.4.93 except to the days she was not allowed duties. Although she reported for work every day. The onus to that the claimant worked continuously from period of 240 days



during the 12 calendar month proceeding the date alleged termination was on the claimant. The claimant failed to discharge the onus. The witness of the management Dr. B.R. Chandra, however, stated that the claimant did work on muster roll daily wages w.e.f. 1.1.90 in different period of spells without completing 240 days in a calendar year. Further the claimant did not work continuously or w.e.f. 17.12.89. He was very specific the claimant did not work continuously or w.e.f. 17.12.89. He was very specific the claimant worked on daily wages as and when required that too for specific period an was admitted by the claimant during her cross examination as discussed above.

13. The claimant can't taken benefit without taking orders from the court to place and prove documents on record in possession of the management. On the basis of cross examination wherein the management witness admitted that he did not being muster roll from 1988 to 1993. In fact, there was no direction to witness ever sought to prove muster roll even during the cross examination of the witness. In there given facts and circumstances of the case and the evidence as discussed, there is substances in the submission by Ld. AR for the management that the management was not under objection to with the requirement of Section 25F of the I.D. Act even if it is to assumed that service of the claimant were terminated on 17.11.93. There is further requirement to contain permission in u/s. 25U as admittedly the claimant was never retrenched by the management."

27. The Petitioner/Workman failed to discharge the burden of proof that she was effectively employed as a muster roll employee. Additionally, she failed to demonstrate that any junior to her was retained in the Respondent/Management while her services were terminated. Thus, this court is of the view that the learned Labour



Court was veracious in holding that the Petitioner failed to prove that her services were terminated illegally or the Respondent acted in violation of Section 25F, G & H of the I.D. Act read with Rules 76, 77 & 78.

28. In view of the detailed discussion herein above, this court is of the considered view that the impugned judgment of the learned Labour Court is well-reasoned and there is no perversity or illegality in deciding the terms of reference in favour of the Respondent/Management. Hence the present writ petition is dismissed. No order as to costs.

SEPTEMBER 20, 2022

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GAURANG KANTH, J.

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