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

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Reserved on: 19.10.2022
Pronounced on: 15.11.2022

+ **W.P.(C) 4644/2003**

DAYA NAND

..... Petitioner

Through: Ms. Meghna De, Advocate
versus

GOVT. OF N.C.T. OF DELHI & ANR Respondents

Through: Ms. Sangeeta Bharti, SC with
Ms. Malvi, Advocate for R-
2/DJB

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition emanates from the award dated 19.04.2003 (*"the impugned award"*) passed by the Court of ADJ, Presiding Officer, Labour Court no. II, Karkardooma Courts, Delhi in I.D. No. 347/98. Vide the impugned award, the learned Labour Court held that the Petitioner is not entitled for grant of any relief since he failed to prove that Respondent no.2 has illegally terminated his services by violating Section 25-F and 25-H of the Industrial Disputes Act, 1947 (*"the Act"*)

FACTS RELEVANT FOR THE ADJUDICATION OF THE DISPUTE

2. Facts of the matter as stated in the petition are that the Petitioner was appointed by Respondent no. 2 as a driver with effect from

01.04.1992 after successfully passing a trade test which was conducted by the A.E. Auto Workshop, Subhash Nagar. After his appointment, the Petitioner was deployed in Ashok Vihar, J.J. Colony, CSE Drainage Department, Rohini Zone of Respondent No.2

3. Allegedly, the petitioner was employed on a full-time basis drawing a monthly salary of Rs.3,500/- when his services were terminated on 30.06.1993. For the purpose of seeking redressal with respect to the aforesaid termination, the Petitioner duly presented himself before Respondent no. 2 for permitting him to resume his service. However, the officials continued to assure the petitioner that he would be allowed to resume the duty as and when the vacancies would arise. Further it is alleged that Respondent no.2 withheld wages of petitioner accrued to him for the month of December 1992 regarding which several requests and representations were made, but to no avail.
4. Aggrieved by termination and non-payment of wages, the petitioner approached the conciliation officer wherein he filed his statement of claim on 22.07.1998 alleging violation of Section 25-F and 25-H of the Act. Respondent no.2 filed a reply to the statement of claim in which it was alleged that the Petitioner did not work for the months of December 1992, February & March 1993. It was also averred in the reply filed by Respondent no. 2 that the job of the Petitioner was not of a permanent nature but was rather subjected to periodic sanctions as per the requirement.

5. After conciliation proceedings resulted in failure, the dispute was referred to the Labour Court with the following terms of reference :

“Whether the services of Shri Daya Nand have terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. The Petitioner filed his statement of claim before the learned Labour Court reiterating his case as stated herein above. Despite granting enough opportunities, the Respondent No.2/ Management failed to file its written statement and hence the learned Labour Court was pleased to strike off their defence.
7. In order to prove his case, the Petitioner entered into the witness box as WW-1 and tendered his evidence as WW1/A.
8. After hearing the parties and examining the evidence on behalf of both the parties, the learned Labour Court had passed the impugned award dated 19.04.2003, holding that the Petitioner has failed to prove that the termination of his services by the Management is illegal/unjustified.
9. Aggrieved by the said decision, the petitioner preferred the present Writ Petition, challenging the impugned award dated 19.04.2003.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

10. Ms. Meghna De, learned counsel appearing on behalf of the petitioner vehemently opposed the impugned award by submitting that learned Labour Court failed to appreciate the case of petitioner that he was in 'continuous service' as per Section

25-B(1) of the Act at the time of termination. Learned Labour Court overlooked the fact that termination was *per se* illegal since he was not served with any notice/ letter of termination nor was given preference while engaging fresh hands, therefore action of Respondent no. 2 was violative of Section 25-F and 25-H of the act.

11. Learned Counsel for the Petitioner further argued that learned Labour Court erroneously passed the impugned award by solely relying upon the reply filed by management/Respondent no.2 before the conciliation officer considering it as a gospel truth. Reliance was placed on *S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka (2003) 4 SCC 27* to counter the arguments of Respondent no.2 that petitioner's employment is covered under exception Section 2(oo)(bb) of the Act.
12. To buttress the arguments, learned counsel for the Petitioner relied upon the judgments of the Hon'ble Supreme Court in *Mohan Lal v. Bharat Electronics Ltd., (1981) 3 SCC 225*; *Sarita S. Melwani v. Pallavi V. Talekar, 2008 SCC OnLine Bom 533*; *Workmen v. American Express International Banking Corpn., (1985) 4 SCC 71*; *Central Bank of India v. S. Satyam, (1996) 5 SCC 419*.
13. With these submissions, learned counsel for the Petitioner prays for setting aside of the impugned Award.

SUBMISSION ON BEHALF OF RESPONDENT NO.2

14. *Per contra*, Ms. Sangeeta Bharti, learned Standing counsel appearing on behalf of respondent No. 2 emphasized upon the
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fact that petitioner's services was not of a continuous nature, but rather his services were availed from time to time by obtaining sanctions from the competent authority. Learned counsel further stated that petitioner was not engaged after 23.06.1993 owing to the reason that his services were not needed in the establishment. Allegations regarding violation of Section 25-F of the Act was denied on the ground that the petitioner has not completed 240 days in the preceding calendar year.

15. With these submissions, learned counsel for Respondent No. 2 prays for the dismissal of the present writ Petition.

LEGAL ANALYSIS

16. This Court heard the arguments advanced by the learned counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.
17. The question to be examined for the purpose of adjudication of the present dispute is whether the service of the Petitioner was terminated in violation of Section 25-F and 25-H of the Act as alleged by the Petitioner.
18. At the outset, it is noted that the Petitioner has placed before this Court certain new documents, which were not part of the learned Labour Court record. It is well settled principle of law that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, is examining whether there is any patent illegality or infirmity in the award passed by the industrial Tribunal based on the records available before the Industrial Adjudicator. Hence this Court, at this stage, cannot entertain any

new documents which were not before the Industrial Adjudicator. This legal position is reiterated by the Hon'ble Apex Court in ***Chand Singh v. Sigma Industries Corporation, 2012 SCC OnLine Del 6050***, relevant abstract of the said judgment, inter alia, reads as follows:

“7.However, this report was never placed before the learned Trial Court nor has the workman produced the said Labour Inspector as a witness before the Trial Court to prove his case. Clearly the writ court cannot look into the documents produced before it for the first time which were never part of the record before the learned Labour Court.”

Hence this Court is refrained from examining the new documents which were not part of the Labour Court record.

19. In the present case, the Petitioner initiated the Industrial dispute alleging the violation of Section 25-F and 25 -H of the Act. It is the case of the Petitioner that he was appointed as a driver by Respondent no.2 with effect from 01.04.1992. The Management failed to file its written statement before the learned Labour Court and hence its defence was struck off by the learned Labour Court. However, the Petitioner placed on record Exhibit WW-1/1, the reply filed by the Management before the Conciliation Officer. As per Exhibit WW1/1, the Respondent No. 2/Management admitted that the Petitioner joined the service of Respondent No. 2 as Driver w.e.f 01.04.1992. According to them, the Petitioner worked for a total period 207 days from April 1992 to November 1992. Thereafter he worked 23 days in January 1993, 26 days in April 1993 and 23 days in May 1993.

20. Major plea adopted by the Petitioner is that since he was in 'continuous service' as per Section 25-B of the Act, he can be removed from services only after proper compliance of Section 25-F of the Act, which reads as follows:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

* * * * *

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]"

21. A perusal of Section 25-F of the Act reveals that in order to claim the benefit of Section 25-F, the Workman needs to prove that he has worked 240 days in a calendar year with the Respondent/Management. The Hon'ble Supreme Court in ***Mohd. Ali vs. State of H.P. & Ors. (Civil Appeal No. 3803/2018)*** decided on 16.04.2018, examined the scope of Section 25 F of the Act and held, inter alia, as follows:

"9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of

retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

22. It is well settled position of law that in cases where violation of Section 25-F of the Act is alleged, the burden is on the Workman to prove that he was in continuous employment of 240 days or more in a calendar year with the Management. This principle is reiterated by the Hon'ble Supreme Court in the case of ***R.M Yellatti Vs The Assistant Executive Engineer reported as JT (2009) SC 340***. The relevant portion, reiterated as follows:

"Analyzing 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 earner, 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 (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 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.”

23. In view of the law laid down by the Hon'ble Supreme Court as quoted herein above, the first question to be examined is whether the Petitioner discharged his burden regarding his continuous employment with the Respondent/Management. A perusal of the record shows that the Petitioner has not produced any document to discharge the said burden. The Respondent's defence was struck off, however, the Petitioner produced Exhibit WW-1 in which the Respondent disputed the fact that the Petitioner worked for 240 days. No attempt was made by the Petitioner to summon the wage Register/Muster roll register etc. Except the statement of the Petitioner, there is nothing on record to show that the Petitioner worked for a continuous period of 240 days in a calendar year.

24. The Petitioner also alleges violation of Section 25-H of the Act, which reads as follows:

“25H. Re- employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity² to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman] who offer themselves for re- employment shall have preference over other persons.”

25. The perusal of the record shows that except the statement of the Petitioner/workman, no evidence whatsoever was produced on record to show that there is any violation of Section 25-H of the Act.

26. Learned Labour Court examined in detail whether there is any violation Section 25-F or 25-H of the Act, in the present case and held, inter alia, as follows:

“5. As already stated workman concerned in support of his case has relied upon document Ex. WW I/1. This document clearly goes to show that the workman concerned used to be engaged as muster roll driver from time to time after obtaining the sanction of the competent authority. In paragraph 2 of the said document periods during which the workman concerned had been engaged have also been specified. This document clearly goes to show that the workman concerned used to be engaged by the management depending upon the exigencies of work and that too for specific period. He used to be engaged in pursuance of sanction of the competent authority. His employment was not of a continuous nature as is clear from Ex. WW I/1 when during December 1992, Feb 1993 and March 1993, workman concerned was not engaged at all. A perusal of this document clearly goes to show that the termination of services of the workman concerned in the case in hand resulted as a result of non-renewal of the contract of employment between the parties. It is not the case of the workman that his engagement by the management from time to time against sanction was bad. The workman concerned has claimed protection of

Section 25 F of the Act. It appears to me that the case in hand is covered by the Exception 2(oo)(bb) and the termination in question does not amount to retrenchment.

6. *The workman concerned also claims that after termination of his service management has employed about 100 workmen without giving any opportunity to him and therefore this action is stated to be violative of Section 25H of the Act. Workman's own document Ex. WW1/1 in paragraph 8 denies engagement of any such persons. Workman concerned has neither given names nor dates of employment of such new hands. This allegation is therefore vague. Management also admits receipt of workman's representation dated 21.4.1997 has claimed that his case for re-engagement could not be considered because there was no post of driver lying vacant in the division. Consequently, workman concerned has failed to prove violation of Section 25H of the Act.*

7. *In view of the aforesaid discussions, I hold that the workman concerned has failed to prove that termination of his services by the management is illegal and/or unjustified. He is therefore not entitled to grant of any relief whatsoever."*

27. This Court is in agreement with the finding of the learned Labour Court. The Petitioner failed to lead prove that there is any violation of 25-F and 25-H of the Act.

28. In view of the detailed discussion herein above, this Court is of the considered opinion that there is no infirmity or perversity in the impugned Award and the same is based on settled position of law. Therefore, the impugned award dated 19.04.2003 passed by the Court of ADJ, Presiding Officer, Labour Court no. II, Karkardooma Courts, Delhi is hereby upheld.

29. Accordingly, the present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 15, 2022

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