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

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Date of Decision: 27.08.2024+ **W.P.(C) 5513/2003****INDIRA GANDHI NATIONAL CENTRE FOR ARTS**

.....Petitioner

Through: Mr. Abinash Kr. Mishra, Advocate

versus

THE P.O. LABOUR COURT-VII & ANR

.....Respondents

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed seeking to challenge the *ex-parte* Award dated 10.07.2002 [hereinafter referred to as 'Impugned Award'] passed by the Presiding Officer, Labour Court/Respondent No. 1 in I.D No. 286/98. By the Impugned Award, the Respondent No. 2/Workman was directed to be reinstated with the Petitioner with full back wages.
2. Notice to show cause why rule *nisi* be not issued was issued by this Court on 15.10.2003. It was further directed that subject to deposit of 50% of the amount awarded as well as litigation charges in the sum of Rs. 5,000/-, the Impugned Award shall remain stayed. These interim protections continued till 10.09.2008 thereafter it was made absolute till the disposal of the proceedings.
3. Although, the Respondent was appearing in the matter through Counsel for a brief period up to 23.03.2007, no appearance on behalf of the



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Respondent No. 2/Workman was made thereafter. The Coordinate Bench of this Court issued Court Notice to the parties on 11.07.2022. Subsequently, since the Respondent No. 2/Workman remained unserved, the Petitioner filed an Application for service of the Respondent No. 2/Workman by publication in daily newspaper “Statesman” (English) and “Veer Arjun” (Hindi) which was published on 19.04.2024 and 17.04.2024, respectively.

4. Even thereafter, there was no presence of the Respondent No. 2/Workman on 27.05.2024 and 13.08.2024 and therefore, the Respondent No. 2/Workman was proceeded *ex parte* on 13.08.2024.

5. Learned Counsel for the Petitioner submits that the Petitioner is an autonomous body functioning under the Ministry of Culture, Government of India. Learned Counsel further submits that the Impugned Award is an *ex parte* Award and was passed in the absence of the Petitioner, and thus the law as was settled by this Court in respect of similarly placed Respondents/Workman, could not be placed on record before the learned Labour Court.

5.1 Learned Counsel for the Petitioner seeks to rely upon the judgments of the Coordinate Bench of this Court in the matter of ***Shankar Shah Gaon [sic Gond] vs. Indira Gandhi National Centre for Arts¹*** as well as Division Bench of this Court in the matter of ***Chattarpal Singh Ors. v. Indira Gandhi National Centre for Arts²***.

6. Briefly, the undisputed facts are that the Respondent No. 2/Workman was recruited along with other persons on daily wages as a casual worker by the Petitioner for a short period of time. Usually, these workers were

¹ 2005:DHC:24694

² Order dated 12.03.2012 in LPA number 1035 of 2011



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engaged for specific jobs on projects undertaken by the Petitioner, such as mounting of exhibitions, running of exhibitions, dismantling of exhibitions, packing, transportation of the dismantled material to the stores, etc. The services of the Respondent No. 2/Workmen were continued only if required and not otherwise.

6.1 The Respondent No. 2/Workman was employed on the post of a peon as a casual worker by an Appointment Letter dated 03.03.1993. Initially, the appointment was for a period of six months which was extended from time to time and the Respondent No. 2/Workman continued up to 31.08.1996 uninterrupted. Being aggrieved by the discontinuation of service, the Respondent No. 2/Workman filed a Statement of Claim before the learned Labour Court on 04.01.1999. The Written Statement was filed by the Petitioner and pursuance of which following issue was framed by the learned Labour Court:

"Whether the services of Sh. Vikas Chandra Jha have been 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?"

6.2 The Petitioner was proceeded *ex parte* on 31.07.2001. Since the Petitioner failed to appear before the learned Labour Court, the testimony of the Respondent No. 2/Workman went unrebutted. This lead to the Impugned Award being passed on 10.07.2002 directing that the Respondent No. 2/Workman be reinstated with the Petitioner with full back wages. Aggrieved by the Impugned Award, the Petitioner has filed the present Petition.

7. It is the case of the Petitioner that the Respondent No. 2/Workman is a



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daily wager and not a workman and the nature of the work is causal and not continuous or perennial. In addition, it is contended that the Petitioner is not an industry as defined under Section 2(j) of the Industrial Disputes Act, 1947 as it is governed by its own rules/bye-laws for internal management and its affairs are conducted by its Executive Council.

8. A Counter Affidavit was filed by the Respondent No. 2/Workman challenging the Petition filed along with certain documents denying the contentions of the Petitioner along with its Counter-Affidavit, the Respondent No.2 filed the documents which included the documents which had been filed by the Petitioner before the learned Labour Court. These included a communication/note dated 20/21.06.1996 issued by the Petitioner which set out the names of 16 daily wagers including the Petitioner seeking permission of extension of their services up to 03.08.1996. In pursuance thereof, the Director (A&F) and Under-Secretary advised the Petitioner that daily wagers are no longer required by the Petitioner and that the services of the 16 persons including the Petitioner may be dispensed with in a phased manner. This decision was approved by the Under-Secretary on 02.08.1996 and pursuant thereto these persons (including the Petitioner) were informed of the decision to dispense with their services. The Respondents were also informed that they would be called upon by the Petitioner, if their services were required. The communications are hereafter called the “1996 Communications” for ease of reference.

9. Learned Counsel for the Petitioner submits that amongst the 16 persons whose services were dispensed with was a Mr. Shankar Shah Gaon who had filed a Petition challenging his removal before this Court. The said Petition was listed as W.P.(C) 3362/1996 titled as ***Shankar Shah Gaon [sic***



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Gond] vs. Indira Gandhi National Centre for Arts [hereinafter referred to as “*Shankar Shah* case”]. By a judgment dated 07.11.2005, this Court found that there were no regular posts to which the Workman could be appointed and that the Management had its own regular employees who had been recruited in accordance with its policies and since the work was no longer required, their services were discontinued.

9.1 It was further held in the *Shankar Shah* case that the services of the 16 persons [including Respondent No. 2 in the present case] were for a limited duration of six months and thereafter they were granted extensions after the expiry of the said six-month period. However, these extensions did not by themselves create a right to claim regularization or creation of posts for such Workmen. Since the Workmen were not on permanent basis, relying on the judgments of the Supreme Court³, the petitions filed by the Respondents/Workmen were dismissed. The relevant extract of the judgment in the *Shankar Shah* case reads as under:

“8. I have gone through the official records of the Centre. They indicate that the services of the Petitioner along with about 15 other persons were initially engaged on identical terms, on daily wage basis for fixed periods. The notings and the orders granting sanction from time to time also indicate that the Respondent continued the services on expiry of the six month periods and granted extension. It may be that these extensions were not communicated; however there is nothing on record to indicate that these extensions by themselves created a right to claim regularisation or that they amounted to sanction for creation of posts. On the contrary, the final order after which the Petitioner's services were disengaged clearly records that the daily wagers have been recruited for casual/seasonal work and were not on permanent basis. The note which led to the order also states that regular posts cannot be created and the daily wagers were continued due to exigencies of project work. The note of the Under-Secretary dated

³ MD, U.P. Land Development Corporation and another v. Amar Singh and others: 2003 SCC (L & S) 690; Manager, Reserve Bank of India, Bangalore v. S. Mani and other, (2005) 5 SCC 100 and as University of Delhi v. Ram Sagar and others: 77 (1999) DLT 106.



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21.6.1996 also records that the Centre has 64 regular Group D employees and that the future work load could be managed by such workers.

9. On consideration of these factors, I am of the view that the line of judgments of the Supreme Court that there is no right to claim regularisation, by casual and dally wagers who have not been appointed against sanctioned or regular posts would be applicable; the Petitioner in this case cannot claim relief sought for in these proceedings. The appointment letter as well as the records clearly show that at no point of time the Petitioner considered to be in regular appointment. In the light of above findings, the Petitioner is not entitled to any relief.

The Writ Petition is accordingly dismissed.”

[Emphasis supplied]

10. Learned Counsel for the Petitioner submits that the decision in **Shankar Shah** case has attained finality and, thus, contends that a similar order be passed with respect to the Respondent No.2/Workman as well.

11. The Petitioner has also relied upon the judgment of the Division Bench of this Court in the matter of **Chattarpal Singh case** and other connected matters wherein some of the Workmen who had similarly been let go, in terms of the “1996 Communications” had filed appeals assailing judgment(s) passed by the learned Single Judge challenging their services being dispensed with.

11.1 The Division Bench relying on the judgment of the Supreme Court in **Secretary, State of Karnataka and Ors. v. Uma Devi and Ors⁴**, [hereinafter referred to as **Uma Devi** case] disposed of the Appeals directing fact that the Workmen were not entitled to regularization and in view of the statement made by the Counsel appearing for the Management that as and when there would be work, the same would be offered to the Workmen in order of their

⁴ (2006) 4 SCC 1



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seniority. The relevant extract of order dated 12.03.2012 of the **Chattarpal Singh** case is set out below:

“10. In all these cases, management has given a statement before the learned Single Judge that as and when there would be work, the same would be offered to the appellants in the order of their seniority. A statement is made at the Bar by learned Counsel for the management that the management is adhering to this statement made before the Court.

11. Once we find that these workmen had worked for short spells, that too on casual/daily rate basis and long back and when the workmen are not entitled to regularization having regard to the judgment of the Supreme Court in Secretary, State of Karnataka & Ors. v. Uma Devi & Ors., (2006) 4 SCC 1, we do not find any fault with the orders of the learned Single Judge passed in the writ petitions granting compensation in lieu of reinstatement.

We accordingly dismiss all these Appeals.”

[Emphasis supplied]

12. The record shows that the entire tenure of the service of the Respondent No. 2/Workman was on a casual basis from 02.04.1993 to 31.08.1996. The letters dated 07.12.1992 [Mark A]; 18.12.1992 [Ex. WW-1/2], 03.03.1993 [Ex. WW-1/3]; Demand Notice dated 29.10.1997 [Ex. WW-1/5] show that even as per the Workman, he always performed his duties as a casual worker.

13. Learned Counsel for the Petitioner thus submits that as was done in the **Shankar Shah** case and in the cases of all such Workmen, a similar order be also passed by this Court.

13.1 Relying on the judgment of the Supreme Court in the **Uma Devi** case, it is contended that where persons are engaged in employment either temporary or on a casual basis, they are aware of the consequences as being temporary and such persons cannot invoke the theory of legitimate expectation for being confirmed in the post, especially when no vacancy for such post exists.



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“45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to take out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.”

[Emphasis supplied]

14. Learned Counsel for the Petitioner, on instructions, submits that as



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has been contended in the judgments set out herein of the case of similarly placed Workmen, as and when there would be work available for the Respondent No. 2/Workman, the same would be offered to the Respondent No. 2/Workman in order of his seniority.

14.1 In addition, the learned Counsel submits that so far as concerns the compensation in lieu of reinstatement, since the Respondent No. 2/Workman worked for a period from 03.03.1993 to 31.08.1996, he would be entitled to compensation in the sum of Rs.10,000/- per annum as has been paid to another similarly placed Workmen in the matter of ***Rajbir Singh vs. Indira Gandhi National Centre for Arts***⁵. The relevant extract of the order is given below:

“2. Against a similar Award dated 12th April, 2006 concerning another workman Rajender Kumar Writ Petition (Civil) No. 12085 of 2006 filed by the workman was dismissed by this Court on 31st July, 2006. Although the workman had sought modification of the Award as to direct reinstatement with full back wages, this Court directed that he should be paid a sum of Rs.10,000/- per annum as compensation in lieu of reinstatement.

3. Consequently the present writ petitions are disposed of by modifying the impugned Award by directing that the Petitioner will be paid compensation of Rs. 10,000/- per annum. The amount be paid within a period of eight weeks from today.”

[Emphasis supplied]

15. Accordingly, it is agreed that compensation in lieu of reinstatement in the sum of Rs.10,000/- per annum shall also be paid to the Respondent No. 2/Workman by the Petitioner for each year (or part thereof).

16. The statements of the learned Counsel for the Petitioner are made on instructions and are taken on record.

17. In the circumstances and for the reasons as stated above, the

⁵ Order dated 19.08.2011 in W.P.(C) 978/2007



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Impugned Award is modified to the following extent:

(i) As and when there would be work available for the Respondent No. 2/Workman, the Petitioner shall inform him of the same, and take all appropriate steps in that regard, in the order of his seniority.

(ii) The compensation in lieu of reinstatement in the sum of Rs. 35,000/- for the period which the Respondent No.2/Workman had rendered services to the Petitioner from 03.03.1993 to 31.08.1996 shall be paid to the Respondent No. 2/Workman within six weeks from the date of this Order.

18. For this purpose, let the copy of this judgment be forwarded to the Respondent No. 2/Workman by the Registry of this Court at his last known address.

19. The Petition and all pending Applications stand disposed of in the foregoing terms.

TARA VITASTA GANJU, J

AUGUST 27, 2024

g.joshi

Click here to check corrigendum, if any