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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21.09.2022

Pronounced on: 11.10.2022

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W.P.(C) 6341/2003

LAL CHAND

..... Petitioner

Through: Ms. Perna Mehta and Mr.
Rishabh Gupta Advocates

versus

THE MANAGEMENT OF M/S. RAIL INDIA
TECHNICAL ECONOMIC SERVICES LTD

..... Respondent

Through: Mr. G. S. Chaturvedi,
Advocate

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Petitioner in the present Writ Petition is aggrieved by the Award dated 09.08.2002 passed by the Presiding Officer, Labour Court-V, Karkardooma Courts, New Delhi in ID No. 170/93 titled as *The management of M/s Rail India Tech. & Economic Service versus Workman Sh. Lal Chand* (“**impugned Award**”). Vide the impugned Award, the learned Labour Court was pleased to hold that since workman was a casual/daily wage labour, his termination does not amount to retrenchment and provisions of section 25-F of The

Industrial Disputes Act, 1947 (“the Act”) cannot be said to be violated.

Facts relevant for the consideration of the present Writ Petition are as follows:

2. It is the case of workman/petitioner that he was employed as Messenger on casual basis in the U.T. Wing of R.I.T.E.S India Ltd, New Delhi since 14.08.1989. He was transferred to Hindi section vide letter dated 30.11.1989, wherein his service was extended for three months w.e.f 02.02.1990. His tenure was further extended till 11.03.1991 in Hindi department until he was transferred back to U.T. Division vide order dated 11.03.1991.
3. That petitioner continued dispensing his duties by means of regular extension till 31.10.1991, however his service was terminated w.e.f. 22.10.1991 as per decision of the C.G.M (U.T.). Aggrieved by the said termination, petitioner made his representation to employer/respondent, however allegedly no response was received by petitioner from respondent.
4. The petitioner raised an industrial dispute before the Conciliation Officer. After conciliation proceedings resulted in failure, appropriate Government referred the following reference to the Industrial Tribunal for adjudication:

“Whether the termination of services of Sh. Lal Chand is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regards?”

5. The petitioner/workman filed his statement of claim alleging that he was appointed as a casual messenger on daily wage basis with the management w.e.f. 14.08.1989 and was working without any break in service. It was his contention that his job was of perennial nature. Further, he contended that he was wrongfully terminated by the management without any charge sheet, notice, service compensation, notice pay, and therefore violated provisions of Section 25-F of the Act. The respondent filed its written statement denying the allegation on the ground that the petitioner's termination of service does not amount to retrenchment to attract the provisions of Section 25-F of the Act. According to the respondent, the present case falls under the exception carved out under Section 2 (oo) (bb) of the Act which states that termination of employee made on account of expiry of stipulated period of time in employment contract is not retrenchment.
6. Based on the pleadings of the parties, learned Labour Court framed the following issues:
- (i) Whether the claim is not maintainable in view of the preliminary objection No.2 of WS? OPM
 - (ii) Relief as per terms of reference
7. Parties led the evidence to prove their respective cases. The petitioner examined himself as WW-1 and the respondent

examined Mr. S.G Rao, Manager (Personnel), M/s RITES Ltd. as MW-1 .

8. The learned Labour Court, based on the evidence adduced by the parties, vide the impugned Award dated 09.08.2002, decided the dispute in favour of the respondent on the ground that since the petitioner was employed for a fixed term, he cannot claim continuation of service after expiry of the stipulated period of time.
9. Being aggrieved by the impugned Award, the petitioner is challenging the same by way of the present petition.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

10. Ms. Prerna Mehta, learned counsel appearing on behalf of the petitioner challenged the impugned Award on the ground that learned Labour Court erroneously interpreted the Section 2(oo) of the Act i.e. 'retrenchment' and failed to evaluate the true nature of petitioner's employment with the respondent. It is submitted by the learned counsel for the petitioner that the defence adopted by the respondent that petitioner's case is covered by Section 2(oo) (bb) of the Act, is not acceptable. It is the contention of the learned counsel for the petitioner that Section 2(oo)(bb) of the Act cannot be extended to cases where job continues for a long period of time and the employee's work is satisfactory but periodical extensions of tenure are made to avoid the rigors of the Act. Hence

termination of the service of the employee in such case would amount to unfair labour practice.

11. It is further alleged by the learned counsel for the petitioner that the termination of the petitioner is in violation of the mandatory provisions of 25F and 25G of the Act. Further the respondent failed to comply with the principles of natural justice since the petitioner was serving as a casual worker for more than two years continuously with satisfactory track record.

12. To provide legal backing to her submissions, learned counsel for the petitioner relied upon judgments delivered in *S.M. Nilajkar v. Telecom District Manager*, 2003 (4) SCC 27, *MCD v. Narender Kumar* 144 (2007) DLT 493, *Sunder Singh v. PO Industrial Tribunal I* 2013 SCC Online Del 537, *Surat Mahila Nagrik Sahakari Bank, Ltd. v. Mamtaben Mahendrabhai Joshi*, 2000 SCC OnLine Guj 140; *Shailendra Nath Shukla v. Vice-Chancellor, Allahabad University*, 1986 SCC OnLine All 714; *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court*, (1990) 3 SCC 682.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

13. Mr. G.S. Chaturvedi, learned counsel for the respondents argued before this Court in support of the impugned Award. Learned counsel submitted that learned Labour Court has

appropriately analyzed the nature of employment and rightly reached the conclusion that the petitioner was in a casual and contractual employment subject to periodic extensions, and hence his termination cannot be termed as 'retrenchment' as defined under Section 2(oo) of the Act.

14. Learned counsel for the respondents further submitted that no question of retrenchment arises in petitioner's case as he was employed in a reserved category post against which no permanent recruitment could have been made. The petitioner was well aware of the fact that his employment is completely contractual and temporary in nature and his tenure solely depends on respondent's requirement and periodic extensions. His service tenure came to an end by the expiry of the stipulated period which is covered by Section 2(oo) (bb) of the Act, hence no retrenchment is made. Since the present matter is not a case of retrenchment, Section 25-F of the Act is not attracted.

15. In order to buttress his argument, learned counsel for the respondent placed reliance on Judgments of the Hon'ble Supreme Court in *Nand Lal v. Housing & Urban Development Corporation Ltd. (HUDCO)*, 2006 SCC OnLine Del 1225; *Escorts Ltd. v. Presiding Officer*, (1997) 11 SCC 521; *MD, Karnataka Handloom Development Corpn. Ltd. v. Sri Mahadeva Laxman Raval*, (2006) 13 SCC 15.

LEGAL ANALYSIS

16. Heard arguments advanced by the learned counsel for the parties and perused the documents placed on record and judgments relied upon by the parties.
17. In the present matter, it is an undisputed fact that petitioner was employed as a casual worker on daily wage basis in respondent organisation in the year 1989 wherein his tenure was periodically extended for 3/6 months. He went to serve the respondent organisation for more than 2 years till 22.10.1991. It is the case of the petitioner/workman that his service was illegally terminated by the respondent w.e.f 22.10.1991.
18. The main issue to be decided in the present matter is whether the alleged termination of the petitioner falls under the exception of 'retrenchment' as provided in Section 2 (oo) (bb) of the Act.
19. At this juncture, it is important to examine the legislative history of the Section 2(oo)(bb) of the Act. Section 2(oo)(bb) was introduced into the Act, by way of an amendment in the year 1984. Section 2(oo) of the Act, as it stands prior to the amendment, reads, inter alia, as follows:

"2. Definitions: In this Act, unless there is anything repugnant in the subject or context,--

----- [(oo) "retrenchment" means the termination by the employer of the service of a workman for any

reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;"

20. The legislative intention for the introduction of Section 2(oo)(bb) of the Act as an exception to 'retrenchment' was explained by the Hon'ble Apex Court in ***S.M Nilajakar & Ors Vs Telecom, District Manager*** reported as **2003 (4) SCC 27**.

The relevant portion, reads, inter alia, as follows:

"It is common Knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally

interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

21. The newly introduced Section 2(oo) (bb) of the Act, reads as follows:

“2. (oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

*(a)- (b) ****

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;”

22. The Hon’ble Supreme Court in **S.M Nilajakar (Supra)**, further explained the meaning of the word ‘retrenchment’ in view of the newly added Section 2(oo)(bb) of the Act. The relevant portion of the above-mentioned judgment of the Hon’ble Supreme Court, reads, inter alia, as follows:

“12. 'Retrenchment' in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'. 13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;*
- (ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and*

(iii) *the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.*

(iv) *the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.*

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of Sub-clause (bb) abovesaid.....”

23.Hence as per the law laid down by the Hon’ble Supreme Court in ***S.M Nilajakar (Supra)***, the following principles can be deduced:

- (i) The legislative intent is to assign the term 'retrenchment' a wider meaning than what it is understood to have in common parlance.
- (ii) There are four exceptions carved out of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination.
- (iii) A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'.
- (iv) The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-
 - (i) that the workman was employed in a project or scheme of temporary duration;
 - (ii) the employment was on a contract, and not as a daily-wager simplicitor, and
 - (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
 - (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

- (v) The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived.
- (vi) To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of Sub-clause (bb) abovesaid.

24. As per the perusal of the record of the present case, this Court notes the following facts:

- (i) The petitioner/workman was initially appointed as a Messenger on daily wages in the U.T Division of the respondent organisation.
- (ii) Subsequently vide office order No. RT/285 of 1989 dated 30.11.1989, he has been transferred to Hindi Section/Corporate office on the existing terms and conditions against the vacancy caused by the transfer of Mr. Ram Raj, Messenger to project office as Messenger cum Driver.
- (iii) Vide letter dated 06.03.1990, his tenure was extended for a further period of 3 months w.e.f 02.02.1990. Thereafter his service was extended from time to time. Last extension was vide Office order No. RC-35 of

1991 dated 07.05.1991. Vide the said office Order, his tenure was extended for 6 months from 01.05.1991 or till the posting of a regular SC/ST Candidates whichever is earlier. Hence his tenure was till 31.10.1991 unless a SC/ST candidates appointed against the said post.

- (iv) It is the case of the petitioner/workman that he was not allowed to resume his job w.e.f 22.10.1991, i.e, even prior to the expiry of the term of his tenure, i.e, 31.10.1991.
- (v) It is also an admitted position that the termination of the petitioner was not by way of punishment. Further no compensation whatsoever has been paid to the petitioner/workman.
- (vi) The respondent organisation in its written statement had taken a stand that the petitioner/workman was engaged by the respondent organisation for a '*certain project*' for a specific period of time and his service was automatically terminated on the expiry of the said period of time. The burden of proving the said fact was on the respondent, however, the respondent miserably failed to prove the same.
- (vii) MW-1 in his evidence stated that the petitioner was appointed against a reserved category post, quota post for SC/ST and the respondent organisation could not

have appointed any person permanently against the said post. This stand is contrary to the stand taken by the respondent in its written statement.

(viii) During his cross examination, MW-1 admitted that the petitioner was not appointed for any particular project. He also admitted that in the respondent organisation there are other messengers working on casual basis.

(ix) The petitioner/workman placed on record recommendation letter dated 23.05.1991 (Exhibit WW1/1) issued by Mr. M.L Tiwari, Dy.GM (SW)/UT whereby Mr. M.L. Tiwari recommended the name of the petitioner to the higher authorities for giving grade rate of pay in place of daily wages due to his '*continuous and satisfactory performance*' in the said post for over 15 months. This shows that the performance of the petitioner was satisfactory.

25. The learned Labour Court, while passing the impugned Award dated 09.08.2002, proceeded on the erroneous basis that there exists a fixed term of contract between the parties and the petitioner was engaged for a specific period for specific work. After examining the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in *S.M Nilajakar (Supra)*, this Court is of the considered view that the petitioner's appointment was not for any particular project. The petitioner was appointed as a daily

wager for a short term initially. However, the said tenure was extended from time to time without any break in service. The petitioner had a continuous service of more than 2 years with the respondent organisation. Further his service was terminated on 22.10.1991 even before the expiry of his term of employment, i.e. 31.10.1991. No charge sheet/show cause has been issued against the petitioner. No retrenchment compensation has been given to the petitioner. The principles of natural justice have not been complied with. Hence in these circumstances, the learned Labour Court erred in holding that the petitioner's case falls within the exception as carved out under Section 2(o)(bb) of the Act.

26. In view of the aforesaid discussion, this Court is of the considered view that the termination of the petitioner by the respondent organisation does not fall within the exception carved out under Section 2(o)(bb) of the Act and it amounts to 'retrenchment' under the Act.

27. The learned counsel for the petitioner vehemently argued that the termination of the petitioner's service was in violation of the mandatory provisions of Section 25F of the Act. Section 25 F of the Act, reads, inter alia, as follows:

"25.F 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 month's 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]."

28. That as held herein above, the termination of the service of the petitioner by the respondent amounts to 'retrenchment' for the purpose of the Act. The petitioner completed continuous period of more than two years with the respondent organisation. The service of the petitioner was terminated without paying him any notice/retrenchment compensation as envisaged under Section 25F of the Act. Hence this Court is of the considered view that the termination of the petitioner was in violation of section 25 F of the Act.
29. It is well settled principle of law that even if violation of Section 25 F of the Act is established, automatic reinstatement cannot be granted. Hon'ble Supreme Court reiterated this legal proposition recently in the judgment

dated 02.09.2021 passed in **Civil Appeal No. 4483/2010** titled as ***Ranbir Singh Vs Executive Engineer, PWD,*** which reads, inter alia, as follows:

“5. *However, we notice that there is another line of decisions, and the latest of the same, which is brought to our notice by Shri Samar Vijay Singh, learned AAG, is Raj Kumar(Supra). We may refer only to paragraphs-9 and 10:*

“9. *In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSNL v. Bhurumal [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] and Distt. Development Officer v. Satish Kantilal Amrelia [Distt. Development Officer v. Satish Kantilal Amrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276].*

10. *It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)*

“33. *It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this*

Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. *The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*

35. *We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to*

as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.””

6. *In the light of the state of the law, which we take note of, we notice certain facts which are not in dispute. This is a case where it is found that, though the appellant had worked for 240 days, appellant's service was terminated, violating the mandatory provisions of Section 25F of the Act. The authority involved in this case, apparently, is a public authority. At the same time, it is common case that the appellant was a daily wager and the appellant was not a permanent employee. It is relevant to note that, in the award answering Issue No.1, which was, whether the termination of the appellant's service was justified and in order, and if not, what was the amount of back wages he was entitled to, it was found, inter alia, that the appellant could not adduce convincing evidence to establish retention of junior workers. There is no finding of unfair trade practice, as such. In such circumstances, we think that the principle, which is enunciated by this Court, in the decision, which is referred to in Raj Kumar (supra), which we have referred to, would be more appropriate*

to follow. In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy.”

30. In the present case, the petitioner was working with the respondent for a period of 2 years as daily wager. His services were terminated approximately 3 decades back. There is no convincing evidence to prove that the respondent resorted to unfair trade practices or any of the petitioner's juniors were retained in service. There is no allegation of victimisation against the respondent. Hence considering the overall facts and circumstances of the present case, this Court is of the considered view that the ends of justice will meet by reimbursing the petitioner with an adequate compensation. The petitioner worked with respondent for more than 2 years as daily wager and hence in the present case, in my opinion, the petitioner can be awarded a compensation of Rs.1,00,000/- in lieu of reinstatement.
31. In view of the detailed discussion herein above, the present writ petition is allowed, and the impugned Award is hereby set aside. The respondent is directed to pay Rs.1,00,000/- to the petitioner as compensation in lieu of reinstatement. Considering the fact that the termination is effected in the year 1991 and considerable time has already been elapsed

since then, the respondent is directed to make the payment of Rs.1.00,000/- to the petitioner within 8 weeks of the receipt of this order failing which the compensation will carry 6% interest from the date of termination till the date of realisation. No order as to cost.

32. Registry is directed to send this Judgement to the Chairman & Managing Director of the Respondent for expeditious compliance.

OCTOBER 11, 2022

GAURANG KANTH, J.

