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

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Reserved on: 08.02.2023
Pronounced on: 11.04.2023

+ **W.P.(C) 1929/2000**

GUJARAT STATE EXPORT CORPORATION LTD..... Petitioner

Through: Mr. Yogen Pandya and Mr.Priank
Adhyaru, Advocates.

versus

MUKESH TYAGI & ANR. Respondents

Through: Mr. R.K. Shukla and Ms. Nisha,
Advocates.

AND

+ **W.P.(C) 3470/2003**

MUKESH TYAGI Petitioner

Through: Mr. R.K. Shukla and Ms. Nisha,
Advocates.

versus

GUJRAT STATE EXPORT CORPORATION LTD..... Respondent

Through: Mr. Yogen Pandya and Mr.Priank
Adhyaru, Advocates.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. Vide this common judgement, this Court intends to dispose of the following Writ Petitions filed under Article 226 of the Constitution of India:
 - (i) W.P. (C) No. 1929 of 2000 titled as **Gujarat State Export Corporation Ltd. vs. Mukesh Tyagi and Anr.** *vide* which the Petitioner is challenging the award dated 12.11.1999 (*'impugned award'*) passed by the Presiding Officer, Industrial Tribunal, Tis Hazari Courts, Delhi in I.D. No. 1574/90.
 - (ii) W.P. (C) No. 3470 of 2003 titled as **Mukesh Tyagi vs. Gujrat State Export Corporation Ltd.** *vide* which the Petitioner is praying for issuance of an appropriate writ for directing the Gujrat State Export Corporation Ltd. to regularize the services of the petitioner along with consequential benefits as a permanent employee.
2. It is the case of the workman/Sh. Mukesh Tyagi that he was appointed by the Gujarat State Export Corporation Ltd. (*"management"*) on 08.09.1987 at its Pragati Maidan Office, New Delhi as a Typist-cum-clerk. The services of the workman were terminated by the management on 16.04.1989. A demand notice was served upon the management on 15.05.1989, however no response was received. Consequently, an industrial dispute was raised by the workman, which on 13.07.1990 was referred by the Appropriate Government under the Industrial Disputes Act, 1947 (*"I.D. Act"*) to the Industrial Tribunal for

adjudication. The dispute was referred to the learned Labour Court with the following terms of reference:

“Whether the termination of services of Shri Mukesh Tyagi is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?”

3. The workman filed his statement of claim wherein it was averred that he was in the service for a period of 1.5 years earning wages of Rs.900/- per mensem. It was further contended that his services were illegally terminated by the management without conducting an enquiry and following provisions of the I.D. Act.
4. To counter the claims made by the workman, the management by way of its written statement raised a preliminary objection that the reference has not been made by an ‘appropriate authority’ and the statement of claim was not accompanied by relevant documents, hence are liable to be rejected. Further, the management stated in its written statement that the workman was appointed as a casual worker for a specific period and his services could have been terminated at any time or on expiry of the specified term automatically. The Management also alleged misconduct on part of the workman during the employment period as he undertook employment with Karnataka Government Pavilion in Delhi and enrolled himself in regular B.Com course, both of which were against the terms and conditions of the service. Further, that the workman was intimated beforehand in the first week of March 1989 that his services will be no longer required after 15.04.1989 as the operation from Delhi branch was planned to be discontinued.

5. Learned Labour Court after hearing both the parties and perusing the evidence brought on record, passed the impugned award dated 12.11.1999 answering the term of reference in favour of the workman. The learned Labour Court was of the view that that the management failed in establishing that the workman did not tender his continuous service for more than 240 days in a year preceding his termination. It further held that workman's services were terminated in violation of the provision of section 25-F of the I.D. Act, hence such termination is *void ab initio*. Therefore, Learned Labour Court directed the management to reinstate the workman along with payment of the full back wages.
6. Aggrieved by the aforesaid award, the management has preferred **W.P. (C) 1929/2000**, challenging the validity of the impugned award dated 12.11.1999. The Co-ordinate Bench of this Court *vide* an ex-parte order dated 17.09.2013, modified the impugned award to an extent that the management shall pay the workman a sum of Rs.60,000/- towards the compensation in lieu of reinstatement and back wages. **L.P.A. No. 66/2014** was preferred by the workman against the order dated 17.09.2013, which was later withdrawn by the workman through the order dated 11.02.2015. Later, *vide* the order dated 30.10.2015, this Court was pleased to recall the ex parte order dated 17.09.2013.
7. Meanwhile, the workman on 18.04.2002 joined the office of the management located in state of Gujarat. The workman filed a **W.P. (C) 3470/2003** seeking regularization of his service along with all consequential benefits from the date of his appointment i.e. 08.09.1987.

SUBMISSIONS MADE ON BEHALF OF THE WORKMAN

8. Mr. R.K. Shukla, learned counsel appearing for the workman has vehemently opposed the W.P.(C) 1929/2000 filed by the management. It is submitted by the learned counsel that the services of the workman was illegally terminated w.e.f. 16.04.1989 by the management without assigning him any reason and without holding any enquiry against him. The management did not express at the time of appointment that the service was contractual, time bound and temporary in nature.
9. Learned counsel further submits that the management continued to discriminate against the workman even after he rejoined employment at the Gujarat office. Specifically, the management intentionally failed to issue an identity card to the workman and continued to treat him as a daily wage worker, even though he had worked for the organization for more than 15 years since 1987. As a result, the workman was deprived of weekly holidays, gazetted holidays, and sick leave salary.
10. Learned counsel has stated that the workman has written multiple letters/applications to the management requesting to be regularized as a permanent employee due to his long duration of service and satisfactory work record.
11. For buttressing the arguments made, the learned counsel has relied upon the judgment delivered in ***Halli Gowda v. Managing Director, Karnataka State Road Transport Corp., 1989 Supp (1) SCC 267.***
12. With these submissions, the learned counsel has prayed before this Court to issue writ of Mandamus directing the management to regularize the services of the workman from the date of his appointment, i.e. 08.09.1987.

**SUBMISSIONS MADE ON BEHALF OF THE MANAGEMENT/
GUJARAT STATE EXPORT CORPORATION LTD**

13. Learned counsel for the management, Mr. Yogen Pandya, has strongly argued against the validity of the impugned award dated 12.11.1999, in which the learned Labour Court directed reinstatement of the workman with full back wages. The learned counsel has claimed that the workman was hired as a daily-rated typist on a temporary basis at the management's temporary office in New Delhi in 1987. According to the learned counsel, the workman's services were terminated on 15.04.1989, as there was no work left for him due to the closing of the New Delhi office. Since the workman was appointed on a purely temporary basis for a specific duration, his case is covered under Section 2(o)(bb) of the I.D. Act, and no question of retrenchment arises in this case.
14. Learned counsel further submitted that the workman was duly informed by the management that his services will not be required after 15.04.1989, therefore contention of the workman that his services were terminated unreasonably is false and misleading. Furthermore, the learned counsel claimed that the petitioner did not provide his services for more than 240 days in a year, and that the onus was on the workman to prove that he had worked continuously for more than 240 days in a calendar year. However, the workman failed to provide any evidence to support his claim. The learned counsel presented a salary certificate to demonstrate that the petitioner did not work for the entire 30 days in a month, as his salary was based on the number of days he worked.

- 15.Regarding the question of conducting an enquiry against the workman, the learned counsel submitted that there was no need to investigate the charges of misconduct since misconduct was not the basis for the workman's termination.
- 16.In response to the workman's claim for regularization, the learned counsel argued that an employee must be in a regular setup of the company and actively performing their duties in order to seek regularization. In the present case, these two elements are not present, and therefore, the claim for regularization and absorption into the regular staff cannot be accepted
- 17.Learned counsel has placed reliance upon the judgment delivered by the Hon'ble Apex court in *School Education Deptt., Chennai v. R. Govindaswamy*, (2014) 4 SCC 769; *Rajasthan Development Corpn. v. Gitam Singh*, (2013) 5 SCC 136; *State of Gujarat v. Kuberbhai Kanjibhai*, (2019) 4 SCC 307; *K.V. Anil Mithra v. Sree Sankaracharya University of Sanskrit*, 2021 SCC OnLine SC 982.
18. Mr. Pandya, at the end, has submitted that the impugned award suffers from perversity and has resulted in grave miscarriage of justice, therefore the impugned award is liable to be set aside.

LEGAL ANALYSIS

- 19.This Court had heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties
- 20.In this common Judgment, this Court is disposing of two separate Writ Petitions between the same parties. Even though parties are same, the cause of action and prayer in both these Writ petitions are different,

hence this Court deems it appropriate to deal with these Writ Petitions separately.

W.P(C) 3470/2003

21.In W.P(C) 3470/2003, the Workman has not resorted to the proceedings under the I.D. Act, 1947 for addressing his grievances, instead directly approached this Court under Article 226 of the Constitution of India with the following prayer:

“ It is, therefore, most respectfully prayed that in view of the aforesaid facts and circumstances, this Hon’ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent to regularize the services of the petitioner as a permanent employees of the respondent, from the date of his appointment i.e, 08.09.1987, in the interest of justice.

Any other or further relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may also be granted in favour of the Petitioner and against the Respondent”.

22.As per the settled preposition of law, the regularization can be done only as per the regularization policy declared by the State/Government and nobody can claim regularization as a matter of right *dehors* the regularization policy. In the present case, the Workman has not pointed out any specific policy of the Management under which he is entitled to be regularized.

23.Regarding the issue of regularization, it is profitable to examine the law laid down by the Hon’ble Supreme Court in ***State of Rajasthan Vs Daya Lal***, reported as ***[(2011) 2 SCC 429]***:

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v.) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government

employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

24. The Hon'ble Supreme Court reiterated this well settled principle of law recently in *Union of India Vs Ilmo Devi*, reported as **2021 SCC Online SC 899** and *The State of Gujarat and Ors. Vs R.J. Pathan and Ors.* reported as **2022 (5) SCC 394**.

25. In view of the settled position of law, while exercising jurisdiction under Article 226 of the Constitution of India, this Court can not issue any mandamus against the Management for the regularization of the services of the Workman. Hence the present Writ Petition filed by the Workman is dismissed.

W.P. (C) 1929/2000

26. In this Petition, the Management is challenging the impugned Award passed by the learned Labour Court. The issue that requires judicial consideration by this court is whether the services of the workman were illegally and unjustifiably terminated by the management.

27. The perusal of the record suggests that the workman was appointed by the management on 08.09.1987 as a typist on a daily wage basis. His services were terminated on 16.04.1989. The learned Labour Court, in the impugned award, concluded that the management indeed terminated the services of the workman by not complying with the provisions of Sections 25-F of the I.D. Act. It was also observed by the learned Labour Court that the management failed to bring on record any documentary evidence to establish that the workman engaged in misconduct by undertaking alternative employment during his service. The relevant portion of the impugned Award reads as follows:

“I have found that the workman is continuous employment of the management during the period 8.9.87 to 16.4.89. Though he was working as daily wager but his services could not have been terminated without complying the provisions of section 25F of the A.D. Act.

The management has not filed any documents to show the provision of section 25F of I.D. Act were complied before termination of the services of the workman. It has taken the plea that in first week of March' 1989 it informed the workman that his services would not be required after 15.4.89. The workman has denied the case of the management. Section 25 F of the Act says that one month notice should be given in writing to the workman indicating the reason for retrenchment. It is not the case of the management that such notice was given in writing to the workman. It is also not the case of the management that it had paid salary of one month in lieu of such notice. The management has also failed to show that it had paid the retrenchment compensation to the workman or had given notice in the prescribed manner to the appropriate Government. Thus, the management did not comply with any of the three conditions as mentioned in sub-clause 'a' to 'e' of section 25 of the I.D. Act. Therefore, it cannot be said that retrenchment of the workman by way of termination of the service w.e.f. 16.4.89 was legal and valid. The act of the management is not valid by any manner.

The management has further taken the plea that it has closed its business at Delhi and now it is running its affair from Gujarat and as such the services of the workman were not required. The ld. AR of the management has drawn my attention towards the document Ex.MW1/4, issued by Senior Manager Public Relation of the management. The certificate says that the office of Gujarat State Export Corporation Ltd. situated at Gujarat Pavilion, Pragati Madan has been totally closed down from 12.2.96. MW1 admits that pavilion of the management in Pragati Maidan at New Delhi belongs to Government of Gujarat. The management in this case has been appointed Nodal Agency to hold national and international exhibition in Gujarat Pavilion but otherwise the main business of the management is import-export. The electricity and telephone connection in the pavilion are installed in the name of Gujarat Pavilion. A watchman sits outside the pavilion.

The services of the workmen were terminated the year 1989. The certificate Ex.MW1/4 merely says that the office of Gujarat State Export Corporation Ltd. situated at Gujarat Pavilion, Pragati Maidan, New Delhi has been totally closed down w.e.f. 12.2.96. The certificate does not say that work of Gujarat Pavilion has also been closed. Further the work of export was closed in Feb' 1996 whereas the services of the workman were terminated in April 1989. The management had not closed down its activities at the time of the termination of the service of the workman. In any way, it is not the case of the management that it complied with the provisions of section 25FFF of the I.D. Act. before closing down its activities in Delhi. Therefore, also the management cannot succeed.

The management has taken the plea that the workman misconducted during his employment with the management and, therefore, his services were terminated. It is stated that he was also working for Karnataka Pavilion in Pragati Maidan and was doing B. Com. course during his employment with the management and thus violated the condition of employment. The workman has denied the same. MW1 has admitted that the management has not led any documentary or oral evidence to support its allegation with the workman was also working at other place. The management has failed to lead any evidence in support of its allegation that the workman had misconducted in any manner during his employment with the management. Further the management did not conduct any enquiry in respect to these allegations before the termination of the services of the workman. The management has also failed to lead evidence to establish the misconduct of the workman before the Tribunal. Hence, the contention is also devoid of merit.

Another contention of the management is that the workman got gainfully employment even after termination of his service by the management. The workman has denied the same. MW1 has testified that he only heard that the workman started working somewhere after his services were terminated. The MW cannot be believed on the basis of hearsay evidence.

In view of the above discussion, I held that the management terminated the services of the workman illegally and/or unjustifiably on 16.4.89. The workman was paid wages as per wages fixed under the Minimum Wages Act by the Government from time to time. The workman is entitled to be reinstated with full back wages as per the Minimum Wages Act applicable to

the workman and fixed by the Government from time to time. The management shall pay such wages to the workman within 3 months of the award becoming enforceable, otherwise the management shall to pay 12% interest on the balance amount. Award is passed accordingly”.

28. This Court examined the documentary evidence brought on record by the parties and is of the considered opinion that the management failed in establishing that they appointed the workman on contractual nature of job in a time bound manner. Since no appointment/engagement letter was issued to the workman, nor any other explicit communication was made wherein it was categorically communicated to the workman that he is appointed only till the exhibition season, defense of Section 2(oo)(bb) of I.D. Act is not acceptable. It is relevant to examine Section 2(oo) of the I.D. Act which is reproduced below:

“(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 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; or]

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

The observation of the Hon’ble Apex Court in ***S.M Nilajakar & Ors Vs Telecom, District Manager*** reported as **2003 (4) SCC 27** come in handy in this matter as the court categorically stated that conscious

efforts shall be made to intimate a daily wager workman that his/her services are contractual and project based in nature.

“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.....”

29.However, in the absence of any evidence to establish that there was a written contract between the parties which specified that the term of employment is subject to the completion of project, it cannot be presumed that the workman was duly informed about nature of job. Ergo, in such case, Section 2(o)(bb) of the I.D. Act cannot be exploited by the management as an escape mechanism to avoid its obligations under the I.D. Act. Hence, this Court is of the considered view that the termination of the workman by the management does not fall within the exception carved out under Section 2(o)(bb) of the I.D. Act and it amounts to ‘retrenchment’ under the I.D. Act.

30.As far as violation of Section 25-F of the I.D. Act is concerned, it is admitted by the management in their written statement filed before the learned Labour Court that the workman was not paid compensation and notice pay at the time of termination of services. Section 25-F of the

I.D. Act requires an employee to serve the workman a one month's notice in writing. It is one of the arguments of the management that they duly intimated the workman that his services will not be required after 15.04.1989. However, as rightly observed by the learned Labour Court that such intimation was not given in writing. In absence of evidence that a notice in writing was served upon the workman, this court cannot equate such oral intimation with a duly served written notice stating reason for termination. No retrenchment compensation was paid by the management to the workman, which is again a violation of the provision of Section 25-F of the I.D. Act. In such circumstances, the learned Labour Court appropriately held the management's action to be in violation of Section 25-F of the I.D. Act.

31. The management's position is that the workman's services were terminated due to the discontinuation of the management's operations at the New Delhi pavilion. If this Court accepts the management's position that there was no work for the workman because the management discontinued its operations at the New Delhi pavilion, then the provision under Section 25FFF of the I.D. Act comes into the picture. Section 25FFF of the I.D. Act reads as follows:

“25FFF. Compensation to workmen in case of closing down of undertakings-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the

compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months....”

Upon examination of averments and evidence brought on record, it is evident that the management did not comply with the provisions of Section 25FFF of the I.D. Act while terminating the workman. Therefore, based on these facts and circumstances, this Court upholds the finding of the learned Labour Court with respect to violation of the provision of the I.D. Act by the management.

32. In the light of the detailed discussions and law mentioned herein above, this Court is convinced that the impugned award does not suffer from any illegality or perversity. Learned Labour Court did not commit any error while adjudicating the dispute and has reached the conclusion strictly on basis of law and evidence. This Court is not inclined to interfere with the impugned award as far as its finding qua the violation of Section 25 F of the I.D. Act is concerned.

33. Since there was a violation of Section 25 F of the I.D. Act, the learned Labour Court directed reinstatement of Respondent No.2 with full back wages. It is well settled principle of law that relief of reinstatement with full back wages is not to be granted mechanically. While granting reinstatement with full back wages, several factors are required to be taken into consideration. The Hon'ble Supreme Court in ***Madhya Pradesh Administration Vs Tribhuban*** reported as **2007 (9) SCC 748** had an occasion to examine the said legal principle. While substituting the order of '*reinstatement with full back wages*' with Rs.75,000/- as consolidated compensation to the workman, the Hon'ble Supreme Court, *inter alia*, observed as follows:

*“The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed re-instatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in [Section 2\(s\)](#) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secretary, State of Karnataka and Others v Umadevi (3) and Others [(2006) 4 SCC 1]*, and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.*

The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors.”

34. In the present case, the workman worked with the Management for a period of 1 and ½ year, approximately 33 years back. Thereafter during the pendency of the present proceedings, the Management offered employment to the Workman and the Workman joined the service of the Management. However, the said action was without prejudice to the rights and contentions of both the parties. Hence as held by the Hon’ble Supreme Court in *Ilmo Devi (Supra)* no credit can be given to both the parties. Therefore, considering the overall facts and circumstances, in the interest of justice, a consolidated sum of

Rs.1,50,000/- is awarded in lieu of reinstatement and full back wages.
The impugned award stands modified to the same extent.

35. Considering the time elapsed while deciding the present dispute, this Court further directs the Management to make this payment of Rs.1,50,000/- to the Workman within a period of 4 weeks from the date of receipt of this order failing which the said amount will bear an interest of 9% p.a.
36. The present writ petition is disposed in the aforesaid terms. No orders as to the costs.

APRIL 11, 2023
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GAURANG KANTH, J.

