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

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***Reserved on: 08.02.2023
Pronounced on: 21.03.2023***

+ **W.P.(C) 18226/2005**

SMT.GOMATI

..... Petitioner

Through: Mr. Anuj Aggarwal, Ms.
Meghna De and Ms. L.
Gangmei, Advocates.

versus

G.T.B. HOSPITAL

..... Respondent

Through: Ms. Aliza Alam, Advocate for
Ms. Avnish Ahlawat SC,
(APMC).

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Writ Petition has been preferred by the Petitioner assailing the Award dated 08.03.2004 (*'Impugned Award'*) passed by the Industrial Tribunal-II, Karkardooma Courts, New Delhi in I.D. No. 154/ 1990, titled as '*M/s Guru Teg Bahadur Hospital, through Medical Superintendent Vs Sh. Vinod Kumar & Smt. Gomati, through Hospital Employee's Union.*'
2. Vide the said Impugned Award, the learned Labour Court while deciding the dispute referred to it, dismissed the claim of the

Petitioner and held that the termination of Petitioner/Gomati is not illegal and/ or unjustified.

BRIEF FACTS RELEVANT FOR ADJUDICATION OF PRESENT WRIT PETITION

3. It is the case of the Petitioner that she was appointed on 21.12.1987 as a Safai Karamchari by the Respondent on daily wages/ muster roll/ casual worker and she was paid as per Minimum Wages Act, 1948. However, she was illegally terminated from service on 24.07.1989 by the Respondent.
4. Hence, she raised an industrial dispute qua her illegal termination against the Respondent and the same was referred to a Conciliation Officer. But since the conciliation proceedings failed, the Delhi Government referred the dispute to the Industrial Tribunal vide Notification dated 13.03.1990 with the following reference:

“Whether the termination of the services of Sh. Vinod Kumar and Smt. Gomati is illegal and/or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?”

5. The Petitioner filed her statement of claim before the learned Labour Court wherein she alleged that the Respondent terminated her services in violation of Sections 25F, G and H of the Industrial Disputes Act, 1947 (***I.D. Act***). She alleged that she was served with no notice of termination, no seniority list was displayed, no notice pay was either paid or offered and lastly, no compensation was granted. The Petitioner stated that she was working with the Respondent from 21.12.1987 till

24.07.1989. However, she was deliberately given a break from service from 26.07.1988 till 04.05.1989 by the Respondent so that she does not get the status of permanent employee.

6. *Per contra*, the Respondent filed its written statement before the learned Labour Court, wherein it denied all the allegations of the Petitioner. The Respondent, on the contrary, stated that there was no lady named 'Gomati' who worked with the Respondent. Instead the Respondent stated that one Smt. Goma used to work with the Respondent from 21.12.1987 for 157 days. The Respondent further stated that Smt. Goma used to work against leave vacancy so that the work of the Respondent hospital did not suffer. Whenever the employee of the Respondent who used to be on leave came back to work, then the lady, Smt. Goma was not allowed to join duties.
7. Pursuant to the completion of pleadings of the parties, the learned Labour Court did not make any additional issue except for the term of reference by the Delhi Government as mentioned above.
8. Learned Labour Court, vide the Impugned Award, after scrutinizing all the evidence produced before it by both the parties, decided the reference against the Petitioner and in favour of the Respondent. Learned Labour Court held that the termination of the Petitioner done by the Respondent was not illegal or unjustified as the Respondent successfully proved that the Petitioner was working as a daily wage worker on leave vacancies. Further, the Petitioner failed to prove that she worked

for more than 240 days in a calendar year, so her termination was not in violation of Section 25F of the I.D. Act.

9. Thus, being aggrieved by the Impugned Award, the Petitioner has filed the present Petition challenging the Impugned Award.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

10. Mr. Anuj Aggarwal, learned counsel for the Petitioner submits that the Respondent has violated the provisions of Section 25G of I.D. Act and Rule 77 of the Industrial Disputes (Central) Rules, 1957 (***I.D. Rules***).
11. It is submitted by Mr. Anuj Aggarwal, learned counsel for the Petitioner that the Petitioner was a muster roll employee of the Respondent. It has been submitted that it is mandatory for an employer to maintain a muster roll under Section 25D of I.D. Act and to maintain a seniority list under Rule 77 of the I.D. Rules.
12. Mr. Aggarwal submits that in the present case, it is admitted by the Respondent that it was not maintaining any seniority list in accordance with Rule 77 of the I.D. Rules. It is submitted that the Petitioner had even moved an Application under Section 11(3)(b) of the I.D. Act before the learned Labour Court for production of list of all workmen employed by the Respondent after 21.12.1987, but the said Application was not allowed by the learned Labour Court due to which the Petitioner was unable to prove before the learned Labour Court that violation of Section 25G of the I.D. Act took place. Furthermore, he submits that the witness/MW1 of the Respondent admitted in his cross-

examination that the name of the Petitioner was not part of any seniority list.

13. Mr. Anuj Aggarwal has stated that Rule 77 of the I.D. Rules has been adopted in order to fulfill the purpose of Section 25G of I.D. Act. It is mandatory to maintain a seniority list of workmen as stated in Rule 77 of the I.D. Rules and if the same is not maintained by an employer, then the retrenchment of a workman becomes illegal. In order to support his argument, he has relied upon the decision of Division Bench of Patna High Court in ***Gaffar & Ors. Vs Union of India & Ors.***, reported as (1984) 1 LLN 768 and decision of Division Bench of Rajasthan High Court in ***General Manager, Northern Railway, New Delhi Vs Judge, Central Industrial Tribunal & Ors.***, reported as (1992) 2 CLR 459.
14. It has been further argued by Mr. Aggarwal that the Respondent had taken a frivolous defence that no person by the name of the Petitioner was working with the Respondent, but one lady namely, Smt. Goma was working with the Respondent. It is submitted that Goma and Petitioner/Gomati, are the same person.
15. Mr. Anuj Aggarwal, learned counsel for the Petitioner further argues that the case of the Respondent is that the Petitioner was employed for the purpose of filling leave vacancy, however, they have not placed on record any document in order to establish the same.

16. It is stated by Mr. Aggarwal that it is not a necessary condition that a workman should have worked for 240 days in a calendar year for violation of provisions of Section 25G & H of the I.D. Act. The said condition is only mandatory to be fulfilled for violation of Section 25F of the I.D. Act and not of other sections.
17. With these submissions learned counsel for the Petitioner prays for setting aside of the impugned Award.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

18. Ms. Aliza Alam, learned counsel for the Respondent has made a short and simple argument that there was no need for the Respondent to maintain a seniority list of workmen, who were working on daily wages as leave vacancy employees.
19. Ms. Aliza Alam has relied upon the decision of Hon'ble Supreme Court in *Surendranagar District Panchayat Vs Dahyabhai Amarsinh*, (2005) 8 SCC 750, to support her argument.
20. She has submitted that since it was not mandatory for the Respondent to maintain a seniority list of its daily wagger workmen, therefore, it did not maintain the same. Hence, no adverse inference can be drawn against the Respondent due to this reason. Hence, she opposes the submission of the learned counsel for Petitioner that the retrenchment becomes illegal since no seniority list of workmen was maintained.
21. Furthermore, Ms. Aliza Alam states that the Petitioner has failed to prove that any other employee who was junior to her had been

retained by the Respondent. Moreover, the Petitioner has failed to prove that she has worked with the Respondent for more than 240 days in a calendar year.

22. With these submissions learned counsel for the Respondent prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

23. This Court has heard the arguments advanced by both the parties and examined the Labour Court Record and the Judgments relied upon by the parties.
24. Learned Labour Court decided the present dispute against the Petitioner as the Petitioner failed to prove that she had worked for 240 days in a calendar year with the Respondent. In view of the same, the learned Labour Court held that there is no violation of Sections 25 F, G & H of the I.D. Act.
25. Sections 25 F, G & H are part of Chapter V-A of the I.D. Act. In order to attract these provisions, there has to be 'retrenchment'. Hence, it is important to examine whether there is retrenchment as envisaged under Section 2(oo) of the I.D. Act in the present case. Retrenchment is defined under Section 2(oo) of the I.D. Act, which reads, as follows:

"Section 2(oo)(bb) of the ID Act

"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 on-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.”

26. As per Section 2(oo)(bb) of the I.D Act, termination of 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 does not amount to retrenchment. Similarly, if the workman is engaged for a specified period of time and his services were terminated after the said period, the said termination cannot be termed as Retrenchment. This well settled position of law has been reiterated by various High Courts and Hon'ble Supreme Court in catena of cases.

27. In the present case, the Petitioner worked for 156 days from 21.12.1987 to 25.07.1988. Thereafter there was a break in service and the Petitioner was engaged again for a short duration from 04.05.1989 to 24.07.1989. The Petitioner placed on record Exhibit WW1/9 which shows that the Petitioner was appointed against the leave vacancy of one Mr. Karanbir. The Petitioner had admitted before the learned Labour Court itself that she was hired as a daily wage employee against leave vacancy by the Respondent. Hence, the documents placed on record by the parties shows that the Petitioner was appointed against leave vacancies and hence as and when the regular employees joined

back, her services were terminated. Since the Petitioner used to be called for duty only when a permanent employee of the Respondent used to be on leave, therefore, her termination cannot be termed as Retrenchment as per Section 2(oo) of the I.D. Act. The Petitioner's employment falls within the exception of Section 2(oo) (bb) of the I.D. Act. In view of the same, it is not correct to say that there is a retrenchment in the present case. Since there is no retrenchment, Section 25G of the I.D. Act is not applicable in the present case.

28. This Court had an occasion to deal with similar facts and circumstances in a case against the same Respondent herein, titled as '**Smt. Santosh Devi Vs Guru Teg Bahadur Hospital, Shahdara, Delhi**', W.P.(C) 13869/2004, decided on 20.09.2022, wherein this Court observed as follows:

"19. It is the case of the Respondent/Management that the Petitioner/Workman worked in 13 different spells on muster roll w.e.f 01.01.1990 without completing 240 days in a calendar year. The statement of the Petitioner/Workman is in consonance with the stand of the Respondent/Management. It is clear from the cross-examination of the Petitioner where she had herself admitted that she was working 'only' through Employment Exchange. There is no evidence on record, which has been brought by the Petitioner to establish that she has been continuously employed with the Respondent/Management. She deposed that she used to report for work as and when being called by the Respondent/Management. She failed to bring any evidence to corroborate her claim that she has worked for 240 days. Exhibit WW1/6 also proves that she has worked only for a particular span of period from 27.02.1991 to 27.03.1991. No proof of receipt of salary or wages or any record was produced; no co-worker was examined.

20. Hence, it is evident that the Petitioner/Workman was not working with the Respondent/Management continuously as claimed by her. As and when there is requirement of work,

she used to perform her job as a muster roll employee on the basis of the specific request of the Management. From the evidence of the Petitioner/Workman, it is clear that she was engaged for specific work for short terms.

24. In order to attract Section 25 G & H of the I.D. Act, there has to be retrenchment of the workman. The Petitioner/Workman was a muster roll employee engaged on the basis of the exigency of work. She had been paid her wages for the period of her engagement. Hence her disengagement after the completion of her allotted work cannot be termed as retrenchment under Section 2(oo) of the I.D. Act. Hence Section 25H & G are also not attracted.

27. The Petitioner/Workman failed to discharge the burden of proof that she was effectively employed as a muster roll employee. Additionally, she failed to demonstrate that any junior to her was retained in the Respondent/Management while her services were terminated. Thus, this court is of the view that the learned Labour Court was veracious in holding that the Petitioner failed to prove that her services were terminated illegally or the Respondent acted in violation of Section 25F, G & H of the I.D. Act read with Rules 76, 77 & 78."

29. Learned counsel for the Petitioner raised various arguments regarding the non-maintenance of Seniority list, not giving them an opportunity to summon the records of the Respondent, not complying with the mandatory provisions of Section 25-F, G & H of the I.D Act etc. However, this Court is of the considered view that there is no retrenchment and hence Chapter V-A of the I.D Act is not attracted in the present case. Hence this Court is refrained from examining the arguments raised by the Petitioner in the present case as they are only of academic interest qua the present Writ Petition is considered.

30. In view of the detailed discussion herein above, this Court is of the considered view that the Impugned Award passed by the

learned Labour Court is well-reasoned and there is no perversity or illegality in deciding the terms of reference in favour of the Respondent/Management.

31. Hence, the present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

MARCH 21, 2023

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