



2024:DHC:1493



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

% **Date of order : 7th February, 2024**

+ **W.P.(C) 1706/2006**

SURESH CHANDER KAPOOR Petitioner

Through: **Mr.Vijay Kumar, Advocate**

versus

N.D.M.C. & ORS. Respondents

Through: **Mr.Nirvikar Verma, ASC for NDMC**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following relief:-

"a) allow the writ petition filed by the petitioner and set aside the impugned award dated 17.8.2004 passed by Ms. Deepa Sharma, Ld. Presiding Officer, Labour Court, Karkardooma in L.D.No.398/2004..."

2. The facts necessary for adjudication of the instant petition have been reproduced hereunder:

- a) The petitioner herein was employed with the New Delhi Municipal Committee (hereinafter "respondent Committee") , as an ordinary laborer on the muster roll since 22nd November, 1971.

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- b) In the year 1975, the petitioner was promoted from Baildar to MATE vide officer order bearing No. 2664-53/CE (CE) dated 4th September, 1975.
- c) The petitioner was elected to represent the Delhi Municipal Workers (Regd.) affiliated to Indian National Trade Congress and as a part of the same, he frequently visited and corresponded with the respondent no.2, i.e., Sh. K.R. M.D. Nayar, Assistant Engineer.
- d) It has been alleged by the respondent no.2 was instigating the petitioner to lodge complaints against certain other officers and colleagues including one Mr. G.K. Kapoor. The said complaint was with respect to his conduct and discharge of his official duties.
- e) On 13th June, 1979 the petitioner was appointed with 40 workers at Palika Bazar. Attendance of the said event was maintained by the Junior Engineer, namely Shr. K.L. Dawar who informed the petitioner regarding certain absenteeism at the event, being aggrieved by said absenteeism, the petitioner approached the respondent no.2 thereby seeking to settle the matter.
- f) Subsequently, it has been stated that the respondent no.2 abused and threatened the petitioner upon being asked to rectify the situation pertaining to the workers.
- g) Consequently, the petitioner was asked to leave the services of the respondent committee by the respondent no.2.
- h) Thereafter, the petitioner asked the other respondents to intervene, but no concrete action has been taken by them till date.



- i) Upon inquiry, it was revealed to the petitioner that he is still in the service of the respondent committee, however, he was not being permitted to sign the attendance register.
- j) Due to the aforementioned circumstances, the petitioner served letter dated 18th January, 1980 thereby requesting the respondent committee to reinstate the petitioner with full back wages and continuity of service. The said letter was acknowledged by the respondent committee on 19th January, 1980 however, the petitioner was not reinstated.
- k) Pursuant to the same, the petitioner made a complaint to the Labour Commissioner, Delhi Government for proper adjudication of the said dispute which was thereafter referred to the learned Labour Court vide notification dated 6th January, 1981, with the following reference:
- “Whether termination of services of Shri Suresh Chander Kapoor is illegal and /or wrongful and if not, to what relief is he entitled and what directions are necessary in this respect?”*
- l) Both parties filed their respective documents and upon completion of the pleadings, on 18th August, 1982 the learned Labour Court framed the following issues:
- “1. Was the concerned workman employed in an industry?
2.As in terms of reference.”*
- m) Thereafter, the learned Labour Court passed the impugned award dated 17th August, 2004, relying upon the proposal of the Vigilance



Officer dated 4th August, 1979 whereby the Vigilance Officer had already rejected the claim of the petitioner.

- n) Aggrieved by the impugned award dated 17th August, 2004 the petitioner has preferred the instant petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned award has been passed without taking into account the facts and circumstances of the case.
4. It is submitted that the circumstances of the case are such that the petitioner is protected under Article 311 of the Constitution of India and as such the management of the respondent committee cannot terminate the services of the petitioner without holding a proper enquiry and in absence of the due process of law.
5. It is submitted that the learned Labour Court based its reasoning solely on the basis of the report of the Vigilance Officer however, the Vigilance Officer did not provide the petitioner with an appropriate opportunity to the petitioner to defend his claim, which is in violation of the principle of natural justice.
6. It is submitted that the learned Labour Court has erred in holding that the petitioner made a confession before the Vigilance Officer since no such confession was made, moreover, the termination order passed by the respondent Committee on the basis of the confession cannot stand.
7. It is submitted that the observation of the learned Labour Court that there were several complaints against the petitioner is incorrect and there were no complaints against the petitioner till the time of his termination.



8. It is submitted that the learned Labour Court failed to consider the fact the respondent Committee did not produce any substantial evidence against the petitioner and moreover, no complaint of misconduct is pending against him.

9. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

10. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition, submitting to the effect that the learned Labour Court has passed the impugned award after taking into consideration all the relevant facts and circumstances of the case.

11. It is submitted that the claim of the petitioner workman is not maintainable in view of the fact that the services of the petitioner has been terminated from his services on the basis of his confession in writing.

12. It is submitted that the petitioner was served with memos and notices which were not responded to by him, moreover, on 11th June, 1979 the petitioner workman was required to supervise the work being carried out, however he left the site without the permission of his superiors and upon being asked to justify his behavior, the petitioner workman did not respond, which ultimately lead the respondent committee issuing a show cause notice to him.

13. It is further submitted that the respondent committee conducted an inquiry as per the procedure established by law and the Vigilance Officer conducted an inquiry against the petitioner wherein multiple opportunities were provided to the petitioner to present his case.



14. It is submitted that the circumstances which lead to the inquiry included charges of rape and kidnapping against the petitioner and multiple complaints of mis-conduct.

15. It is submitted that in light of the aforesaid charges, there were FIRs registered against the petitioner, and the petitioner sat in the office of the respondent committee, beyond the office hours with strangers which amounted to wrongful practices.

16. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being devoid of any merit.

17. Heard the parties and perused the material on record.

18. In order to decide the instant petition, it is apposite for this Court to analyze the impugned award dated 17th August, 2004. The relevant paragraphs of the impugned award have been reproduced hereunder:

“4. On the pleadings of the parties my Ld. Predecessor has framed the following issues vide order dated 18.08.1982.

1. Was the concerned workman employed in an industry?

2. As in terms of reference.

5. The case was thereafter fixed for workman evidence and part evidence of the workman was recorded. Thereafter the workman stopped attending the court and my d. Predecessor Sh. Satnam Singh, POLC-IV has passed a no dispute award on 05.05.1986. The workman thereafter filed an application for setting aside the said no dispute award and the said no dispute award was set aside and the parties have led their respective evidence and their witnesses have been duly cross examined by their respective AR's. I have heard the final arguments and also perused the relevant records and my findings are as under.

6. The case of the workman in statement of claim is that he had been in the employment of the management since 22.11.1971



and his services were terminated by the management on 13.06.1979. it is submitted that his termination was a result of an incident which had taken place at Palika Bazar which was a newly constructed air-conditioned market in Connaught Place where he was deputed along with 40 workers. He came to know that although few of the workers were on casual leave but they had been marked absent in the attendance register, although their casual leave applications had been received and as kept on record and he being a representative went to Mr. Nayar for settling this dispute and this annoyed him and he asked him to get out of his own as he was no more in his service. So according to the workman his services were terminated on 13.06.1979. It is a settled law that the person who has come to the court for relief has to prove his case.

7. In case M/s GEC Alsthom Ltd. Vs. POIT (1), AI HC-1998 (78) FLR- 136 Hon'ble Allahabad High Court has held that :-

"the burden is on the party who advances a claim and who would fail if no evidence is led to substantiate their claim."

8. The workman however, in his deposition recorded on 13.05.1983, has stated that his services were terminated. On 03.08.1979, he has therefore, contradicted his own claim. Thereafter the workman stopped attending the court and my Ld. Predecessor passed a no dispute award against the workman and thereafter he has furnished his affidavit in evidence which is Ex. WW1/A. In his affidavit, he has stated that his services were terminated on 13.06.1979. The statement of the workman regarding the date of his termination is therefore ever changing. He therefore has failed to prove by cogent evidence on record that his services were terminated on 13.00.1979. The case of the management is that a vigilance enquiry was started against the workman. it is submitted that the evidences were recorded and the workman was also given opportunities and instead of submitting his explanation the workman confessed about his guilt and asked for an apology and after the said vigilance enquiry a report was furnished with the management



and the President of the management of N.D.M.C. passed an order Ex.MW3/A which is dated 02.08.1979 and following the said order of President of the management of N.D.M.C., Sh. Nayar issued a letter Ex.MW3/9 whereby the services of the workman were dispensed with w.e.f. 04.08.1979. The workman has admitted the letter Ex. WW1/M1. this letter is in his hand writing and also bears his dated signature. This letter is dated 02.07.1979 and in this letter, the workman has wrote that " He is working at Golf Link Enquiry Office at the post of Mate". In this letter, he has nowhere stated that his services hasbeen terminated by Sh. Nayar on 13.06.1979. The workman therefore was aware while writing the letter Ex.WW1/M! which is dated 02.07.1979 that his services has not yet been terminated but a vigilance enquiry had been pending against him. The contention of the workman in the statement of claim that his services were terminated on 13.06.1979 therefore. is false to his own knowledge. This fact also get confirmation from the conduct of the workman of sending the demand notice only in January, 1990.

9.From the above discussions, it is apparent that the workman has failed to prove on record that his services were terminated by the management on 13.06.1979 without holding any enquiry or payment of retrenchment compensation etc.The workman therefore, has failed to prove his case.

10.It is a settled law that it is for the workman to prove his case and the workman cannot take any advantage of any weakness of the management. Reliance is made on the findings of the Hon'ble Supreme Court in the case A.l. Railway Parcel and Goods Porters Union Vs. Union of India 2003 (99) FLR 203. It has been held by Hon'ble Supreme Court that :-

"As per the established principle of law, the and the workman cannot take any advantage of any weakness of the management. Reliance is made on the findings of the Hon'ble Supreme Court in the case A.l. Railway Parcel and Goods Porters Union Vs.



Union of India 2003 (99) FLR 203. It has been held by Hon'ble Supreme Court that: -

"As per the established principle of law, the petitioners in order to succeed will have to substantiate their claim. Non-production of "evidence in opposition "will not support the claim of the petitioners even by legal fiction."

11. The contention of the management is that there were several complaints against the workman and for that memo had been issued to him and after the incident of 13.06. 1979 and other incidents whereby the workman had threatened the senior officers and also committed mis-conduct, a vigilance enquiry was initiated against him. The workman had participate in the vigilance enquiry. This fact stands proved by the letter of the workman Ex.WW1/ML, which he has addressed to the DVO(C) who had conducted the vigilance enquiry against the workman. The contention of the workman that he was not given any opportunity is therefore has no bearing. He was given the opportunity and instead of putting any defence he had submitted a letter ExWW1/ML, whereby he has admitted his guilt and furnished his apology and asked for a chance to serve the management. The workman has relied on the findings of Hon'ble Supreme Court in the case of NAR SINGH PAL VS. UNION OF INDIA 2000 SC1401 and has submitted that even if the order of termination is passed on the basis of temporary enquiry, the termination is illegal if no regular departmental enquiry is held. I have carefully perused the case law relied upon by the workman. The findings of the Hon'ble Supreme Court in the case NAR SINGH PAL VS. UNION OF INDIA 2000 SC 140/ (Supra) are not applicable on, the facts of this case. In that case, the Hon'ble Supreme Court, on the facts of that case has held that since the workman had worked for more then 10 years and had also acquire temporary status therefore, termination of his services without paying him retrenchment compensation or record departmental inquiry is invalid. In the present case, the workman has worked only for 8 years with the



management. Admittedly, he had not served the management and remained absent from duty during the period w.e.f. 27.07.1976 to 15.05.1977 i.e. for about 10 months. The workman therefore, has further failed to prove that he had been in the continuous services of the management for 8 years. He had a break in service for about 10 months and he has failed to show that he had been given a regular or temporary status". The workman had been working as a casual worker and there is nothing on record to suggest that he had been regular or had been given a temporary status. His service is not continuous and there was a break in his service for about 10 months during the period w.e.f. 27.07.1976 to 15.05.1977. The findings of Hon'ble Supreme Court in the case NAR SINGH PAL VS UNION OF INDIA 2000 SCI401 (Supra) which was given on the assumptions that the workman in that case had acquired temporary status as he had been working continuously for more than 10 years with that management.

12. It is a settled law as held by the Hon'ble Supreme Court in the case AIR 1967 SC 884. The Hon'ble Supreme Court has described the status of a casual labour and has said :-
"a casual labour is not a holder of a post".

13. The same view has been expressed by Patna High Court in the case KRISHAN MURARI PRASAD AND ANOTHER VS. ALLAHABAD BANK AND ANOTHER 1992 (65) FLR PAGE 58 wherein Hon'ble Judges of Patna High Court have observed that :-

'Persons employed on casual basis cannot claim any right to regular employment and their employment automatically comes to an end resulting in termination simpliciter on completion of a specified period and consequently such casual workman would not be a retrenched workman and would not be entitled to right of employment."

14. In a recent judgement in case of HIMANSHU KUMAR VIDHYARTHI & ORS. VS. STATE OF BIHAR AND



ORS. 1997 (76) FLR 237(SC), the Hon'ble Supreme Court has held that :-

"a temporary employee working on a daily wage has no rights under the ID Act. In that case, the admitted position was that all the petitioners were working as dally wager employee."

15. The own contention of the workman is that the management had terminated his services without holding any domestic enquiry. The question for consideration before divisional bench of Hon'ble Court of Delhi In the case Deihl State Industrial Development Corporation Ltd.Vs. J.K. Thakur: 2001 LLR 830 the question for consideration before the Division Bench of Hon'ble High Court of Delhi was whether the respondent workman who had been engaged as a daily wager in the appellant Corporation could claim regularisation and whether a daily wage had a right of enquiry and hearing.

17. Regarding the right of enquiry and hearing to a daily wager, ; their Lordships held in para 12 of the judgment as under:

"It is elementary that the right of enquiry and hearing arises on holding a post. Such a right is not for asking by all and sundry and is conferred on the members of Civil Service/Government Servants/employees by the Constitution and Service Rules and in certain situation and depending upon a host of factors. This position is no more res-integra and is fairly well settled by several judgments. of Supreme Court right from Purshotam Lat Dhingra's case (1958 SLR 828), therefore, It is not that this right is available in all events and circumstances and to everyone irrespective of his nature of employment and the rules and procedure regulating it. Where an employee is not holding a post, he was liable to be sent out on terms of his appointment/contract."

18. From the above discussions, it is apparent that it is a settle law that the daily wager employee and casual employee has no right to a domestic enquiry. The termination of the workman without holding any domestic enquiry on 13.06.1979 as



contended by the workman is of no consequence, because the workman has failed to prove that his services were terminated by the management on 13.06.1979. From the perusal of the file and the enquiry proceedings placed on record by the management, it is apparent that there were several complaints of serious nature against the workman. There were complaints of mis-behaviour and mis-conduct, abusing senior officers and declining the directions and leaving the work site without intimation and permission and also of moral turpitude. There is complaint of a person living in the neighbourhood of the enquiry officer at Gold Link which is Ex:MW3/4 and this person Sh. Prem Prakash has written the complaint dated.07.06.1979 to the Assistant Engineer, N.D.M.C., wherein he has complained that Suresh Chand Kapoor has been bringing strangers to the enquiry office wherein he was indulging in wrong practices after the office hours. This person had been living in G-3, Golf Link, N.D.M.C. Flats by the side of enquiry office and he found on 06.06.1979 at 9 PM when he was going on his routine evening walk that Suresh Chand was quarrelling with two persons namely Ragubir and Pitamber, chowkidar of this enquiry office and these two chowkidar asked the complainant to rescue them from Suresh Chand and so he asked the Suresh Chand not to do so and chowkidar informed him that he was trying to rape a girl in the latrine and when they tried to prevent him he started abusing and threatened them. This person had also seen Suresh chand und the girl coming out of the latrine. This charge against the workman is also of the very serious nature. He was a casual worker but he dared to use the office after working hours for immoral purposes. Not only this a FIR U/s. 363 L.P.C.was also registered against the workman on 17.08.1976 which is Ex.MW3/12, i.e. charge of kidnapping and rape a girl. The contention of the workman is that he was acquitted from all these charges.



19. Keeping in mind all the above discussion, it is apparent that the claimant has failed to prove that he was a temporary regular employee of the management and that his services were terminated by the management on 13.06.1979. It is apparent that the workman has failed to prove the termination of his services on 13.06.1979 was illegal.

20. The management on the other hand has proved on record that the services of the workman were terminated after a valid enquiry and that the workman had confessed about the guilt in the vigilance enquiry after he was given an opportunity during the vigilance enquiry. on the basis of the proposal of the vigilance officer his services were dispensed of w.e.f. 04.08. 1979 (F.N.).

21. In view of the above discussions. I hold that the workman is not entitled to any relief. I answer the reference against the workman. Award is passed accordingly. File be consigned to record room."

19. The learned Labour Court, while taking into consideration the statement of claim filed by the petitioner workman, observed that the petitioner workman had been in employment of the respondent committee since 22nd November, 1971 and his services were terminated on 13th June, 1979 as a result of an incident that had taken place at the newly constructed Palika Bazar market in Connaught Place, New Delhi. The petitioner workman had been deployed there with around 40 workers and he was intimated about the fact that a few of the workers were on casual leave but had been marked absent in the attendance register, despite their leave applications being received. The petitioner approached the respondent no.2 thereby seeking to settle this dispute, however, the respondent no.2 asked the petitioner to leave the services of the respondent committee.



20. The learned Labour Court further observed that there were several discrepancies in the date of termination as put forth by the petitioner workman since he has disclosed different dates in his statement of claim, his deposition and his affidavit. It has also been observed that the petitioner workman has been unable to bring on record any cogent evidence w.r.t. his services being terminated on 13th June, 1979 i.e., the date as per the statement of claim.

21. It has been further observed by the learned Court that the respondent committee conducted a due inquiry and the president of the respondent committee i.e., the respondent no.2 issued a letter whereby the services of the workman had been dispensed w.e.f. 4th August, 1979. The said letter has been submitted as Ex. MW3/9. Further, the workman in the handwritten letter dated 2nd June, 1979, submitted as Ex. WW1/M1, has not mentioned his date of termination to be 13th June, 1979. Furthermore, it is evident that while issuing the letter dated 2nd June, 1979 the petitioner was aware that a vigilance inquiry had been initiated against him.

22. The learned Labour Court further observed that the letter submitted as Ex. WW1/M1 has established the fact that there were several complaints against the petitioner workman and that the petitioner workman had participated in the vigilance inquiry being conducted against him, since the said letter had been addressed to the DVO (C) i.e., the officer incharge of the vigilance inquiry and the same makes his contention of not having been given an opportunity to be heard, baseless. The learned Labour Court observed that the petitioner has not been in continuous service of the



respondent committee for 8 years, since he remained absent from duty w.e.f. 27th July, 1976 to 15th May, 1977 , therefore he cannot be given a regular or temporary status and remained as a causal worker with the respondent committee.

23. While discussing the issue surrounding the termination of the services of the workman, without due condition of a domestic inquiry, the learned Labour Court while placing reliance on case titled ***Delhi State Industrial Development Corporation Ltd. Vs J.K. Thakur, 2001 SCC OnLine Del 368***, held that a causal employee has no right to a domestic inquiry and therefore the contention of the workman that his services have been terminated without conducting of a domestic inquiry has no consequence since the petitioner has himself failed to prove that his services were terminated on 13th June, 1979.

24. Moreover, the learned Labour Court has observed that the as per the material on its record, the complaints against the petitioner workman were of serious nature. Further, while placing reliance on evidence submitted as Ex. MW3/4 i.e., a complaint written by a resident of the area where the office of the respondent committee is located, the learned Labour Court observed that the petitioner workman had been bringing strangers into the office thereby indulging in wrongful practices after office hours. Moreover, as per the aforesaid complaint, it has been established that the petitioner workman was trying to rape a girl in the washroom and an FIR u/s 363 of the Indian Penal Code, 1860 was also registered against the petitioner for kidnapping and raping a girl.



25. In its conclusion, the learned Labour Court while taking into consideration the facts and discussion of the case held that the petitioner workman has failed to prove his status as a temporary regular employee and the fact that his services were terminated on 13th June, 1979, illegally. It has also been observed that the management has proved its case and established that a valid inquiry was conducted against the petitioner workman and the fact that he had confessed his guilt during the conduction of the vigilance inquiry, on the basis of which his services were dispensed of w.e.f. 4th August, 1979.

26. It is a well settled law, that the onus to prove continuous employment rests with the workman i.e., in the instant case the petitioner. The Hon'ble Supreme Court in case titled ***Range Forest Officer v. S.T. Hadimani***, (2002) 3 SCC 25, categorically held that the workman must prove himself that he has been in continuous employment of the respondent industry for 240 days in order to claim his reinstatement or backwages. In the instant case, the learned Labour Court observed that the petitioner failed to bring on record any material which establishes his continuous employment and therefore reaffirmed his status as a casual employee instead of a regular/temporary employee.

27. Moreover, as per the evidence produced before the learned Labour Court, it is apparent that the petitioner failed to prove that he was in fact terminated on the date on which he claimed to have been terminated i.e., 13th June, 1979. The respondent committee by way of its evidence has been able to bring on record the fact that a due inquiry was conducted vis-à-vis the



charges against the workman. The same is evident by way of letter on page 33 of the documents filed by the respondent committee before the learned labour Court. Furthermore, the respondent committee has brought on record ample documents showcasing the series of serious complaints against the petitioner workman and the multiple representations made to him in order to prove his case. Therefore, it cannot be held that the petitioner was not provided an opportunity to present his case or the termination of services was illegal.

28. In view of the foregoing discussions of law and the material on record, this Court is of the view that the impugned award dated 17th August, 2004 suffers from no infirmity since the learned Labour Court has minutely scrutinised the documents produced before it. The petitioner was unable to prove his case before the learned Labour Court. Moreover, the petitioner workman failed to provide a specific date of termination and substantiate his argument that his services were terminated w.e.f. 13th June, 1979.

29. In light of the same, the award dated 17th August, 2004 passed by Ms. Deepa Sharma, learned Presiding Officer, Labour Court, Karkardooma in L.D.No.398/2004, is upheld and this present petition is dismissed.

30. Pending applications, if any, are also dismissed.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 7, 2024

dy/ds/db

Click here to check corrigendum, if any