



2024:DHC:2297



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

% **Date of order : 6th March, 2024**

+ **W.P.(C) 11475/2021 & CM Appl. No. 35337/2021**

EAST DELHI MUNICIPAL CORPORATION Petitioner
Through: **Mr.Kumar Rajesh Singh, Advocate**

versus

SANDEEP GOYAL AND ANR Respondents
Through: **Mr.Sarfraz Khan, Mr.Mirza Amir
Baig and Mr.Abdul Wahid,
Advocates**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(i) Set aside and quash the impugned Award dated 03.09.2019 passed by Ld. Central Govt. Industrial Tribunal Cum Labour Court No. 1, Rouse Avenue Court Complex, Delhi in ID Case No. 67/2017.

(ii) Pass such order and or further orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. The respondent (‘respondent workman’ hereinafter) was employed on

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ad hoc basis in the petitioner Corporation in the year 2014 at a monthly salary of Rs.8,000/-. In the year 2016, the services of the petitioner were terminated by the petitioner.

3. Pursuant to the illegal termination of his services, the petitioner filed a claim under Section 2(A) of the Industrial Disputes Act, 1947 ('ID Act' hereinafter) bearing no. 67/2017.

4. Pursuant to completion of the proceedings, the learned Industrial Tribunal ('Court below' hereinafter) passed an award dated 3rd September, 2019 ('impugned award' hereinafter) directing the petitioner Corporation to pay a lump sum compensation amount of Rs.1,00,000/- to the respondent workman.

5. Aggrieved by the same, the petitioner Corporation has approached this Court by filing the instant petition.

6. The learned counsel appearing on behalf of the petitioner Corporation submitted that the learned Court below erred by appreciating that there exists employer-employee relationship between the parties.

7. It is submitted that the respondent workman is an employee of the respondent no. 2 and was deployed by them to discharge the obligation towards his contract for service.

8. It is submitted that the ultimate control over the workman was vested with the respondent no. 2 and therefore, the learned Court below erred in holding that the petitioner Corporation is liable to pay the compensation for wrongful termination.

9. It is therefore submitted that the compensation as granted to the



respondent workman has been awarded due to an inadvertent error on part of the learned Tribunal, hence, the impugned award is liable to be set aside.

10. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the present petition submitting to the effect that the petitioner Corporation was the primary employer of the respondent workman.

11. It is submitted that since the issue regarding employer-employee relationship has been already answered by the learned Court below in the impugned award, therefore, no question arises with regard to the establishment of such relationship.

12. It is also submitted that the petitioner Corporation failed to prove that the workman was employed by the respondent no. 2 and therefore, such failure would amount to establishment of the employer-employee relationship between the petitioner Corporation and the respondent workman.

13. It is further submitted that the respondent workman was working with the petitioner Corporation till the time his services were illegally terminated by the petitioner Corporation.

14. Therefore, in view of the foregoing submissions, the learned counsel for the respondent workman submitted that the present petition, being devoid of any merit, is liable to be dismissed.

15. Heard the learned counsel for the parties and perused the record.

16. It is the case of the petitioner Corporation that the learned Court below erred in awarding a lump sum compensation to the respondent



workman, since there did not exist any employer-employee relationship between the parties.

17. In rival submissions, the learned counsel appearing for the respondent workman submitted that the said question has been already answered by the learned Court below, therefore, the issue is already settled and the present petition may be dismissed.

18. Therefore, the limited question for determination before this Court is whether the learned Court below rightly decided the issue holding the same to be in favour of the respondent workman.

19. The relevant extracts of the impugned award reads as under:

5- On the pleadings of the parties, following issues were framed on 29/8/2017 :-

1) Whether services of the claimant have been wrongfully and illegally terminated by the Management on 22/6/20 16 as alleged?

2) Whether the claim filed by the claimant is not legally maintainable in view of the various preliminary objections?

3) Relief.

6- The Claimant in support of his case examined himself as WW1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/7. However, Management No.2 in order to rebut the case of the claimant did not examine any witness despite the fact that number of opportunities were granted to it. Ultimately the defense of the Management No.2 was closed vide order dated 14/12/2019 when it failed to adduce evidence and to pay the costs imposed upon it.

7) I have heard Shri A.K.Singh AR for the claimant/workman and Shri Rajan Kumar, AR for the Management No.2 and have



gone through the records carefully. My findings on the above issues are as follows:

Issue No.1 and 2 :-

8) Both these issues being inter-related are being taken up together for the purpose of discussion and they can be conveniently disposed of.

9) Testimony of the workman/claimant is in line with the averments made in the claim petition. He filed on record a number of documents viz, WW1/1- copy of his Aadhar card; extracts of attendance sheet from December, 2014 to May, 2015 as Ex.WW1/2 (colly.); copy of letter/reply dated 22/6/2016 (Ex.WW1/3) received by the claimant from PIO in the office of Management No.1 under RTI Act, stating that he was engaged by a private company/contractor at its Community Centre for upkeep; another letter/reply dated 3/6/2015 (Ex.WW1/4) received by the claimant from the PIO of the office of Management No.1 stating that he was not the employee of Management No.1 rather was employee of an agency/contractor M/s Prahri Cyber Agency (Management No.2 herein) and that the said agency used to pay wages to him. To the same effect is the reply under RTI Act given by PIO of the office of Management No.1 to the claimant vide letter dated 19/2/2016 (Ex.WW1/5). Vide reply dated 2/11/2016 (Ex.WW1/6) PIO of the office of Management No.1 informed the claimant that Ms. Anita Bali was neither making payment of wages nor taking attendance at Community Centre of Management No.1 and that he was not employee of East MCD; Ex.WW1/7 is the copy of the complaint which the workman had given to ALC/Conciliation Officer. In the cross examination, the workman/claimant clarified that he has no complaint or grievance against Management No.2 herein and he never worked under Management No.2 at any point of time and his relief is restricted only against Management No.1.

10- Neither the Management No.1 nor Management No.2 adduced any cogent evidence on record to prove that the



claimant was in fact was the employee of Management No.2 M/s Prahari Cyber Security or that he Was deputed by Management No.2 to work at the Community Centre of Management No.1 East MCD, although the Management No.1 has time and again informed the claimant vide its replies under RTI Act (Ex.WW1/3 to Ex.WW1/6) that the claimant Sandeep Goel was not the employee of East MCD. Even the Management No.2 has not led any evidence to prove that the claimant was paid minimum wages under Minimum Wages Act besides facilities of PF and ESIC. Testimony of the claimant that he was employed by Management No.1 as a caretaker at its Samudari Bhawan w.e.f. 1/12/2014 at a monthly salary of Rs. 8000/- on ad-hoc basis and that he worked with the Management for 570 days has gone unchallenged and un-assailed. The claimant has filed on record copies of the Attendance Sheet/s for the months from December, 2014 to May, 2015 as Ex.WW1/2 (colly) which is duly signed/verified by Ms. Anita Bali, Building In-charge, Community Service Department, East Delhi Municipal Corporation. Management No.1 has not come forward to rebut the case of the claimant or to show that the documents Ex.WW1/2 (colly) filed by the claimants are false and fabricated. In these facts and circumstances of the case, this Tribunal is of the view that relationship of employee and employer between the workman and Management No.1 stands established and the claimant falls within the definition of workman as provided under Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under:

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages! pay and mode of payment are not at all



relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

11) Version of the claimant/workman that he kept on working under Management No.1 till 22/6/2016 when he received letter dated 22/6/2016 and that his services were terminated illegally, has also gone unchallenged and un-assailed. As mentioned above, version of the claimant that he worked with the Management for 570 days has gone unchallenged and un-assailed. There is nothing on record to suggest that before terminating the services of the claimant any notice/memo or one month's salary in lieu of such notice was paid to him, as required under Section 25-F of the Act, It would not be out of place to mention here that Section 25-F of the Act also clearly provides that 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 the workman has been given one month's notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of the notice.



Provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under:

"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 years 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."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

12- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25f of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of



Section 25-F of the Act will render action of the Management to be illegal and void under the law.

13- Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f.22/6/2016 is held to be illegal and void.

14- Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. No doubt, the version of the claimant that he continuously worked under the Management from 1/12/2014 till 22/6/2016 has gone unchallenged but he has not filed on record any document to show that his employment was on the basis of any written test/interview or that he was getting salary/wages of Rs.8000/- per month from the Management No.1. It would not be out of place to mention here that he disclosed his age as 37 years when he entered the witness box on 17/5/2018 meaning thereby that

he was about 33 years of age when he claimed to have joined employment of the Management on 1/12/2014. Apparently, at the time when he was engaged as Caretaker in the Community Centre of Management No.1, he had crossed the age for selection in any government department/organization. While claiming that he is jobless since after his termination from service, the workman has prayed for reinstatement into service with full back wages. As discussed above, the claimant was engaged on 1/12/2014 and as per his own pleadings, he worked just for 570 days. There is nothing on record to suggest that job of the claimant was on permanent basis or that he was given any regular post/appointment by the Management No.1. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Han Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under:



"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The, Supreme Court has distinguished between a daily wager who does not hold a post and. a permanent employee. 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.

15) Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.1 lakh (Rupees One Lakh) appears to be just and reasonable and the same is payable to the claimant herein by the Management No.1. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act."

20. Upon perusal of the above reproduced paragraphs, it is made out that the learned Court below had duly addressed the contention regarding the existence of employer-employee relationship between the parties.

21. On the issue of whether the respondent workman was an employee of



the respondent no. 2, the learned Court below answered the same in paragraph 10 of the impugned award, whereby, it is clearly stated that both the petitioner Corporation and the respondent no. 2 failed to adduce any evidence to prove that the respondent workman was deputed to the petitioner Corporation by the respondent no. 2 and was not directly employed by the petitioner Corporation.

22. Furthermore, the said paragraph also makes it crystal clear that the representative of the petitioner Corporation did not supplement their claims of non-existence of such a relationship, despite multiple occasions being provided by the learned Court below.

23. Therefore, this Court is satisfied with the findings of the learned Tribunal, whereby, it has been held that the respondent workman was employee of the petitioner Corporation only and not deputed by the respondent no. 2.

24. At last, this Court also deems it important to determine whether the other issue, i.e., illegal termination by the petitioner Corporation was rightly adjudicated by the learned Court below or not.

25. *Qua* the said issue, the findings of the learned Court below at paragraph no. 11 are relevant, where the learned Court categorically held that the claim of the workman regarding continuous employment for 570 days remained unchallenged, therefore, the termination would amount to retrenchment as defined under Section 25(f) of the ID Act which is not permissible under law.

26. It is well settled that this Court cannot examine the evidence by virtue



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of the powers provided under Article 226 of the Constitution of India and only needs to determine the jurisdictional errors or any gross error of law committed by the Labour Courts.

27. Therefore, this Court is of the view that the learned Court below did not commit any error while adjudicating the dispute between the petitioner Corporation and the respondent workman and rightly held the dispute in favour of the respondent workman.

28. In light of the foregoing submissions, this Court deems it appropriate to uphold the award dated 3rd September, 2019 passed in I.D. no. 67/2017 by the learned Central Govt. Industrial Tribunal Cum Labour Court No. 1, Rouse Avenue Court Complex, Delhi, and thus dismiss the instant petition.

29. Pending applications, if any, also stand dismissed.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 6, 2024

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Click here to check corrigendum, if any

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