



2024:DHC:114



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

% **Pronounced on: 9th January, 2024**

+ **W.P.(C) 7422/2018**

SHRI RANJEET

..... Petitioner

Through: Mr. Jawahar Raja and Mr.
Siddharth Sapra, Advocates

versus

DELHI JAL BOARD

..... Respondent

Through: Ms. Malni Balyan, Advocate for
Ms. Sangeeta Bharti, SC

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The present petition under Articles 226/227 of the Constitution of India has been filed on behalf of the petitioner, praying for the following reliefs:

“(a) Issue appropriate writ, order or direction setting aside the Award dated 02.04.2016 passed by the Presiding Officer, Labour Court-XVII, Karkardooma Courts at New Delhi in I.D. No 99/07; and

(b) Direct the Respondent/Management to reinstate the Petitioner/Workman with, continuity of service and with all consequential benefits both monetary and non-monetary; and

(d) Pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice, keeping in view the facts and circumstances of the present case.”



FACTUAL MATRIX

2. The instant petition has been filed against the Award dated 2nd April, 2016 passed by the Presiding Officer Labour Court-XVII Karkardooma Courts at Delhi in ID No. 99/07, by which the relief claimed by the petitioner/workman was rejected. The necessary facts to adjudicate the present petition are as follow:

- I. The petitioner was employed with the erstwhile Delhi Water Supply and Sewage Disposal Undertakings (now known as Delhi Jal Board i.e., respondent) from the year 1994 till June 2002.
- II. The petitioner was on the working with the respondent as a ‘sewer beldar’. It has been alleged that the petitioner’s appointment was on a regular basis, however, he was treated as a muster roll worker and paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948 (hereinafter referred to as the “Act, 1948”).
- III. Thereafter, in the year 2002, the petitioner’s services were terminated by the respondent.
- IV. Subsequently, vide order bearing No. F-24(1110)/06/Lab./5304-08 dated 26th June, 2007 the Government of Delhi (GNCTD) issued a reference and sent the same to the Labour Court with the following terms:

“Whether services of Sh. Ranjeet S/o Sh. Anand, Sewar Beldar came to an end on the completion of job for which he was engaged or whether services of said Sh. Ranjeet have been terminated illegally and, or unjustifiably by the



management, and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt. notifications and to what other relief is he entitled an what directions are necessary in this respect? ”

- V. Further, after considering the claim of the petitioner and written statement filed by the Management, the Labour Court framed the following issues:
- (i) Whether services of the claimant came to an end on completion of the job for which he was engaged?
 - (ii) Whether his services were terminated illegally?
- VI. In order to prove his case, the claimant tendered his affidavit in evidence as Ex.WW1/A and deposed all the facts stated in the statement of claim. He also relied on certain documents, i.e., demand notice, muster roll, etc.
- VII. Thereafter, the Management examined its Assistant Director, (P&M) Mr.K.K.Sharma (MW1) who deposed in terms of the contentions made in the written statement.
- VIII. After considering the documents/material on the records, depositions of the witnesses, contentions made by both the parties and relying upon the several judicial pronouncements, the learned Labour Court, vide the impugned award dated 2nd April, 2016, decided the issues flagged above in favour of the Management and against the workman.



IX. Aggrieved by the award dated 2nd April, 2016, the petitioner has filed the instant petition.

SUBMISSIONS

On behalf of petitioner:

3. Learned counsel appearing on behalf of the petitioner submits that the impugned award dated 2nd April, 2016, passed by the learned Labour Court in I.D. No. 99/07 is not only perverse but also arbitrary and, therefore, is liable to be set-aside. Additionally, the learned Labour Court has not decided the matter in its correct perspective, rather the matter has been decided solely on the basis of surmises and conjectures, without taking into consideration the issues which go to the root of the matter and without adverting to the statutory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”).

4. It is submitted that for applicability of Section 25G & H of the Act, 1947, the petitioner is not required to prove that he had worked continuously for a period of 240 days during twelve calendar months preceding the termination of his services.

5. It is submitted that the learned Labour Court erroneously held that the petitioner was working against a seasonal post, since the respondent's witness was not able bring to light the particulars of the project for which the petitioner's services were required, moreover, no financial details of the apparent project were disclosed, which clearly proves that the petitioner was not engaged as a seasonal worker, rather he was working as a permanent workman against a vacant post.

6. It is submitted that the respondent's witness has clearly admitted



that the job of 'sewer gang Beldar' is not of seasonal nature rather the same is permanent in nature.

7. It is also submitted that the finding of the learned Labour Court that the petitioner has not completed 240 days in a calendar year, is arbitrary as the Court has calculated only the actual working days of the petitioner not including Sundays and other gazetted holidays, is illegal as per the mandate of Section 25B of the Act.

8. It is submitted that the petitioner has categorically stated that the services of his co-workers namely Shri Sanjay S/o Shri Ramo, Mr. Bobby S/o Shri Bhushan were retained, however, the petitioner's services were terminated. The aforesaid statement rendered by the petitioner has not been validated since there was no cross examination done by the respondent on the said point, whereas the respondent witness has categorically admitted that many of the 'sewer gang Beldars' recruited in the year 1994, are still working with the respondent and have acquired the status of a regular employee, he also admitted that seniority lists are managed by the management, and no seniority list of the workman was displayed by the respondent before termination of the services of the petitioner.

9. It is also submitted that this Court must draw an adverse inference against the respondent, since the respondent failed to bring on record the seniority list of the workman at the time the petitioner's services were terminated.

10. It is submitted that the learned Labour Court, erred in concluding that the petitioner has failed to prove any violation of Section 25G as the petitioner did not tender any document in evidence. The learned Labour



Court held that the document must be in possession of the respondent but further went on to hold that the petitioner did not move any application for direction to produce such documents.

11. It is further submitted that the petitioner did move any application before the learned Labour Court on 2nd April 2012, thereby seeking the respondent to produce seniority lists of the beldars appointed from the year 1994 as well as the list of all those beldars who have been employed after termination of his services. The said application was duly contested by the respondent.

12. It is further submitted that respondent witness has categorically admitted that 'fresh sewer gang beldars' were taken into employment on muster roll by Respondent/Management after November, 2002 i.e., after the termination of the services of the petitioner. It is further admitted that after the year 2002, the petitioner was not provided with a call letter, calling upon him to join his duties. He has also not denied the fact that certain individuals, namely Meghnath, Kuldeep and Hemant were taken into employment after the termination of the services of the petitioner. This aversion of the respondent witness clearly establishes that respondent violated Section 25H of the Act.

13. It is also submitted that Sections 25F, 25G and 25H of the Act, are independent of each other and termination of services of a workman are in violation of any of the provisions, the said termination is illegal and *void-ab-initio*. Moreover, for the aforesaid sections to be applicable, continuous service of 240 days is not required.

14. It is also submitted that the action of the respondent is also in violation of Articles 14, 16, 21 and 39(d) of the Constitution of India.



15. In view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs sought may be granted.

On behalf of respondent

16. *Per contra*, the learned counsel appearing on behalf of the respondent whilst opposing the petition submitted that the respondent herein undertakes various projects for which extra hands are engaged from time to time in different divisions. The extra hands engaged against specific projects are made fully aware of the fact that their engagement is purely for the said project and is only for the duration of the project i.e., it would come to an end after expiry of specific sanctions against which they are employed.

17. It is further submitted that the petitioner joined the services of the respondent in the year 1994 as Beldar on daily wages muster roll without undergoing any selection procedure., Over a period of time he was engaged by different divisions against different projects and different sanctions from time to time and thereafter w.e.f. June 2002 his services were disengaged. Accordingly, the petitioner herein could not have had any grievance whatsoever against the termination/disengagement of his services as his services were purely seasonal and casual in nature.

18. It is also submitted that the petitioner had not worked for a period of 240 days in any calendar year starting from 1994 to 2002. Furthermore, the petitioner had not worked for 240 days even in the calendar year immediately preceding the date of his termination.

19. It is also submitted that learned Labour Court is in consonance with the material available on record and such findings of the learned Labour



Court cannot, in any manner, be termed as unreasonable or unjustifiable or having been returned without reference to the record.

20. It is submitted that the petitioner has himself admitted in his cross-examination conducted by the respondent that he had been appointed as a 'Seasonal Beldar' which factum has been referred to by the learned Labour Court in paragraph 10 of the impugned award. This admission on the part of the petitioner proves the falsity of the claim of the workman that his engagement was for a job, which was permanent or regular in nature.

21. It is further submitted that the award passed by the learned Labour Court is based on the material available on record and in no manner unreasonable or unjustifiable. It is an admitted fact that the petitioner was engaged by the respondent for seasonal work.

22. It is also submitted that he has not completed 240 days in any calendar year since the date of his engagement till the date of his termination.

23. Whilst placing reliance on the judgment of the Hon'ble Supreme Court in *Batala Coop Sugar Mills Ltd vs. Sworan Singh* (2005) 8 SCC 481, *Bhavnagar Municipal Corporation and Others vs. Jadeja Govubha Chanubha and Another*; (2014) 16 SCC 130 learned counsel appearing on behalf of the respondent submitted that it is settled position of law that the onus to prove that workman has been in employment for more than 240 days lies purely on the workman himself and in the present matter the petitioner/workman has been unable to bring on record any document which substantiates the factum that there has been a violation of Section 25G and 25H of the Act.



24. The learned counsel appearing on behalf of the respondent further placed reliance on the judgments of the Hon'ble Supreme Court in *Secretary of State v. Umadevi (3) and Ors (2006) 4 SCC 1* and *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra (2005) 5 SCC 122* to contend to the effect that in view of the settled position of law in the above said judgments, the workman, i.e., the petitioner herein, cannot claim regularization.

25. In view of the above, it is submitted that the instant petition being devoid of any merit is liable to be dismissed.

ANALYSIS AND FINDINGS

26. Heard the learned counsel appearing for the parties and perused the records. This Court has given its thoughtful consideration to the submissions made by the parties.

27. Before delving into the analysis of the matter, it is pertinent to revisit the facts of the case. The petitioner joined the services of the erstwhile Delhi Water Supply and Sewage Disposal Undertakings (now known as Delhi Jal Board) i.e., the respondent in the year 1994. The petitioner worked with the respondent from the year 1994 till June 2002. Subsequently, the petitioner's services were terminated w.e.f. June 2002. Alleging his termination to be illegal, the petitioner raised an industrial dispute which was decided in favour of the respondent vide award dated 2nd April, 2016. Aggrieved by the aforesaid award, the petitioner has preferred the instant petition.

28. Therefore, this Court shall adjudicate the present writ petition in relation to the issue *as to whether the services of the claimant came to an*



end on completion of the job/contract for which he was engaged, and second part whether his service was terminated illegally.

29. At this juncture, it becomes apposite for this Court to analyse Section 25F of the Industrial Disputes Act, 1947 which reads to the effect:

“Section 25F in The Industrial Disputes Act, 1947

25F. 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 pay² [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government³ [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

A bare perusal of the aforesaid Section reveals that the provisions contained in Section 25 F of the Act are required to be complied with, if the concerned workman has completed 240 days of continuous service in a period of 12 months preceding the order of his termination.

30. Adverting to the facts of the present petition, the learned Labour Court has, admittedly, based its decision on the following:



- i. The muster roll, i.e., Ex.WW1/4, which has been heavily relied upon by the claimant/ petitioner in order to prove that he had completed 240 days in the preceding year of termination of his services and;
- ii. As per the said muster roll, the claimant had never completed 240 days continuously, as claimed in the preceding year of termination of his services.

31. The petitioner/workman raised a contention with regard to rendering continuous service for a period of 240 days in the preceding year of termination of his services but failed to produce any document to establish his claim of completion of continuous service for a period of 240 days as is mandated under Section 25F of the Act. It is therefore not correct to contend that the plea raised by the petitioner, that he had worked for a period of 240 days was deemed to have been admitted by applying the doctrine of “Non-Traversal”. In any event, the contention of the petitioner having been denied and disputed, it was obligatory on the part of petitioner to adduce appropriate evidence.

32. While adjudicating the entire dispute, the learned Labour Court in paragraph 9 of the impugned award observed as under:

“ 9. Ld. ARW submitted that management had flouted the provisions of Section 25-G of the LD. Act, 1947 also because several co-workers, namely, Sanjay and Bobby were still in the job when die claimant was thrown out from services. After his disengagement, the management had freshly employed some persons namely, Meghnath, Kuldeep and Hemant etc. In order to prove that fact, the claimant did not tender any document in evidence. Such document is supposed to be in the custody of the management. He did not move



any application for a direction to the management to produce such document. MW1 was cross examined by ARW on this point. He admitted it correct that many Sever Gang Beldars recruited in 1994 were still working with the management as regular employees. He took U-turn and deposed that he was not knowing whether any such workmen were still working with the management. Even if, it is presumed that Sewer Gang . Beldars recruited in 1994 were working with the management, it is not going to help the claimant because it has been deposed by MW1 that they were regularized. From that deposition, it does not become clear whether the employees who were regularized by the management were senior or junior to the claimant. So, the claimant has failed to prove that management had violated provisions of Section 25-G of the ID. Act.”

33. In the instant case, the petitioner has not produced any document except the muster roll to show that he worked for a period of 240 days immediately prior to the date of his termination. The learned Labour Court, after examining the muster roll properly as well as the cross-examination of ARW, reached to the conclusion that the petitioner had never completed 240 days continuous service since 1994. Therefore, the petitioner failed to prove that he had worked for a period of 240 days as per the mandate of Section 25F of the Act.

34. At this juncture, it is apposite for this Court to analyze the cases concerning retrenchment/termination of services of daily-waged earners, particularly, those who are appointed to work in government departments, the daily-waged earners are not regular employees. It is a settled principle of law that such individuals are not provided with letters of appointment or termination, moreover, they are not given any written document which



can be produced as proof of receipt of wages and their muster rolls are maintained in loose sheets. The aforesaid principle has been reiterated by the Hon'ble Supreme Court in a catena of judgments.

35. The Hon'ble Supreme Court in case titled ***Essen Deinki V. Rajiv Kumar***; 2003 SCC (L&S) 13 observed that the responsibility to prove 240 days of work rests with the employee in case there is any dispute regarding this fact. The relevant portion of the said judgment has been reproduced herein:

" 16. The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer V. S.T.Hadimani, was pleased to state as below:

" In our opinion the Tribunal was right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240days in the year preceding his termination. It was the case of the claimant that he had worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."



36. In the case of ***Kamal Center Cooperative Bank Ltd. Vs L.C. Indl. Tribunal-cum-Labour Court Rohtak&Others. 1994 II LLJ 1005***, the High Court of Punjab and Haryana observed that any worker not having completed 240 days of services doesn't have any right under the Industrial Dispute Act, 1947. The relevant portion of the judgment is as under:-

"The Industrial workers who do not complete 240 days of service have no industrial rights under the Act and cannot, therefore, avail of the machinery provided under the Act for the settlement of their disputes. The policy of the Act a distinction between those with service of 240 days and more and other with less. It was not necessary for the management in the present case to comply with the provisions of Section 25(H) of the Act before dispensing with the service of the workman as be admitted less than, 240 days of service".

37. In the case of ***Ram Gopal Saini Vs. The Judge, Labour Court No. 2 Jaipur and Others, 2001 LLR 747***, the petitioner had not completed 240 days of work in a calendar year and therefore the case was not in compliance with Section 25-F of the Act. The relevant portion of the aforesaid judgement is reproduced hereunder:

"The petitioner has not completed days of working in a calendar year, Therefore compliance of Section 25-F of the Act was not required in the instant case."

38. In ***Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan[(2004) 8 SCC 161]*** the position was again reiterated in para 6 as follows:

" It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as



sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25]. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.”

39. In case titled **RBI v. S. Mani**, [(2005) 5 SCC 100] a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The learned Labour Court’s view that the burden was on the employer was held to be erroneous.

40. Similarly, in the case of **Municipal Corpn., Faridabad v. Siri Niwas**, [(2004) 8 SCC 195] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment.

41. In the instant case, despite the workman’s best efforts to portray that there has been a violation of Section 25G and 25H of the Act, he has failed to prove that he was engaged from 1994 to 2002 on muster roll and that he has completed 240 days of service in a calendar year, prior to his termination. Moreover, the petitioner has failed to bring on record any document supporting his argument that he worked for 240 days.

42. Accordingly, the issue framed stands decided.

CONCLUSION

43. In light of the foregoing discussions, this Court is of the considered opinion that the appellant workman was not able to establish that he



2024:DHC:114



completed 240 days of service in a calendar year. Keeping in view the finding of fact arrived at by the learned Labour Court after minutely scanning the entire record, this Court does not find any reason to interfere with the impugned award dated 2nd April, 2016 passed in ID No. 99/07 by the learned Labour Court-XVII, Karkardooma Courts, Delhi.

44. Therefore, the instant petition being devoid of any merit, is thus dismissed.

45. Pending applications, if any, also stand disposed of.

46. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 9, 2024
SV/DS