

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 18673 of 2009

Haldia Calcutta Port and Dock Shramik Union

Versus

Central Govt. Industrial Tribunal and Others

For the Petitioners : Mr. Ujjal Ray, Adv.
Mr. Shaondeep Chakraborty, Adv.
Mr. Ronit Deshai, Adv.
Mr. Mainan Ray, Adv.

For the Respondents : Mr. Ashok Kumar Jena, Adv.

Heard on : 10.09.2025

Judgment on : 24.10.2025

Ajay Kumar Gupta, J:

1. The petitioner has approached this court seeking directions, inter alia, upon the Respondent Authorities forthwith to cancel, set aside, withdraw and/or rescind the impugned Award dated 23.12.2008, and not to give effect or any further effect thereto, and praying for consequential reliefs.
2. By the impugned Award, the Tribunal observed that the termination of service of the petitioner is found to be legal. However, a lump sum compensation of Rs. 25,000/- was directed to be paid to the petitioner as his termination was prior to the expiry of the terms of the contractual period.
3. The specific case of the petitioner is that the respondent no.3 is a body corporate, constituted under the Major Port Trusts Act, 1963, with different outstation sites. For the purpose of executing various works, 31 casual workers were employed at the River Training Wing against the regular vacancies of various categories including the category of Sweeper/Safai Mazdoor for different outstation sites including the Head office itself.
4. Out of those 31 workers, only the petitioner has been forwarded by the local Employment Exchange office and the rest were taken from outside. The Petitioner was appointed as "Temporary Sweeper" in two spells in the year 1986 for doing the sweeping work at the head office.

- 5.** Subsequently, the petitioner, along with two others, were recommended by the office of the Regional Employment Exchange directing them to appear in the interview, scheduled to be held on 15.03.1990, for making the establishment of River Training/Wing clean and healthy. After being interviewed by the Respondent no.3, the petitioner was selected, but with an oblique motive to unfairly appoint him for 3 months only. His place of work was fixed at 20, Garden Reach Road, Calcutta-7000 043, which is the Head office of the Respondent No.3.
- 6.** It is further contended that the Petitioner was found medically fit, but ignoring the necessity for engaging a permanent employee for the post of “sweeper” under the regular vacancy, issued only temporary employment for 3 months, with further condition stipulated therein that service is terminable on 24 hours’ notice from either side.
- 7.** The petitioner was again appointed by another letter of appointment dated 25.09.1990 for two months with a condition for termination under the same terms and conditions as stipulated in his earlier appointment letter dated 09.04.1990.
- 8.** The petitioner was engaged and issued similar appointment letters subsequently on 29.10.1990, 03.01.1991, 11.04.1991, 27.07.1991, 02.11.1991 and 11.02.1992 as a temporary sweeper but stipulated either two months or three months. The petitioner’s service was

continuous without break since no termination letter had been issued. Break of service was shown artificially although the petitioner all along worked as a sweeper in the office of the Respondent no.3 and he was paid separate vouchers as his service could not be treated as contractual appointment. Appointment letters will go to show that the workman was appointed as a temporary Sweeper, even though it was against the vacancy under the River Training Wing.

9. The petitioner was supposed to work up to 11.05.1992 as per last appointment letter but, all of a sudden, without assigning any reasons, the respondent authority, vide their letter No. RT/EST/G/1106 dated 31.03.1992 terminated the service of the Petitioner w.e.f. 01.04.1992 i.e. before the duration of employment as appended in the terms and conditions of the appointment letter.
10. It was further contended that the Petitioner's service, although, was temporary but the service was permanent in nature as his place of work was confined to the Head office of the River Training Wing situated at 20, Garden Reach Road, Calcutta-7000 043, for cleaning and sweeping of the extended floor of the said Head office but his sudden termination of service was very much illegal and unjust. His service was terminated violating the tenure and nature of employment as stipulated in the letter of appointment. It was allegedly shown as temporary all the time but same was very regular

in nature. Time and again the management expressed its desire to retain the post as permanent in nature since the service of sweeper is all along required and satisfactory. Sudden termination of the petitioner's service has badly hampered the hygiene of the Head office as there was no sweeper, and proposal has been made to engage a local sweeper for sweeping the office.

- 11.** After termination of the petitioner, the respondent no.3 by his letter no. ADMN/4284/XI/M/B/CS dated 14.11.1994 confirmed the necessity of sweepers for maintaining of the closure of the Secondary Channel. Such reason for termination of service was neither bona fide nor proper and it was contrary to the law and unjust.
- 12.** The dispute of termination was referred to by the Ministry of Labour, Government of India, New Delhi before the Respondent no.1 being No.12 of 1994. Thereafter as per direction of the Respondent No.1, the Petitioner and the respondent no.3 filed their claim statement and written statement along with the documents before the respondent No.1.
- 13.** After conclusion of proceeding, the industrial dispute between the parties was finally adjudicated by the Respondent No.1 and an Award was made on 20.02.1997 and published the same on 29.03.1997.
- 14.** Being aggrieved by and dissatisfied with the Award dated 20.02.1997, the respondent no.3 had filed a writ Petition before the Single Bench

of the Hon'ble High Court. After hearing the parties, the Single Bench, vide judgement dated 12.08.2002, set aside the Award, remanded back for fresh adjudication before the Respondent No.1, and specifically directed to decide the reference having regard to the issue under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

15. Being further aggrieved, the Petitioner, Sri Ashok Hela preferred an appeal before the Division Bench of the Hon'ble High Court being MAT No. 3635 of 2004 and after hearing, the Hon'ble Division Bench, by its judgement and order dated 07.02.2005, extending the liberty to the petitioner to proceed before the respondent no.1 confining the point of adjudication with regard to the applicability of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and while considering the matter afresh, the learned Central Government Industrial Tribunal shall make up its own mind on the issue raised with regard to the applicability of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 in the petitioner's case.

16. The respondent no.1 allowed the parties to place the case and finally passed an Award dated 23.12.2008. The said Award under notice of publication was sent to the Petitioner on 08.06.2009 wherein it was observed that "this termination" is based on contractual relationship between the parties, as such, on the basis of the aforesaid appointment letters, which were given to the workman terminating of

service as per provisions of Section 2 (oo) (bb) of the Act legally and should not be termed as retrenchment as so defined in the Act for this purpose. However, as held by the tribunal that the workman shall be granted compensation of Rs.25,000/- looking at the fact that the petitioner remained unemployed till 30.06 1992. Hence, this writ petition.

- 17.** Mr. Ujjal Ray, learned counsel representing the petitioner vehemently argued and submitted that the respondent No.1 absolutely misconstrued the provisions of Section 2 (oo) (bb) and has come to an erroneous finding and as such the same is liable to be set aside. The Respondent no.1 ought to have been allowed service of the petitioner to be continued as it was terminated illegally and without giving an opportunity to the petitioner. The service of sweeping was permanent in nature but he was terminated prior to expiry of period of service.
- 18.** The Respondent no.1 misconstrued and misinterpreted the clear language of the provision; it could be easily understood that if there would be any non-renewal of contract then the same could not be termed as retrenchment. However, in this case, there was continuous employment and he worked for a long period again and again on the same and similar contract of employment. There was no break in service, although it was an artificial break but actually, he worked

without any break in service, therefore it cannot be said that there is no renewal of contract.

- 19.** It was further submitted that other employees were appointed similarly as the petitioner and they were made permanent employees. Whereas the petitioner was terminated even during actual term of period of engagement. Sweeper working at the Head Office and the nature of job of a sweeper whose place of work in the Head office building and not in any site cannot be termed as contractual employment. The respondent No.1 and 3 committed a grave error holding that the appointment of the petitioner is contractual employment.
- 20.** Mr. Ray finally has placed reliance on judgements passed in the following cases to bolster his contention that the duty of the sweeper itself qualifies to be a permanent nature of job and they may be absorbed as permanent job and that the court can mould relief even if no specific relief has been sought for relying on the facts and circumstances of the present case: -

1. State of Bombay & Ors. Vs. Hospital Mazdoor Sabha and Others¹;

2. Olga Tellis & Ors. Vs. Bombay Municipal Corporation and Ors.²;

¹ AIR 1960 SC 610;

² (1985) 3 SCC 545;

3. *Hargurpratap Singh Vs. State of Punjab and Ors.*³;

4. *Jaggo Vs. Union of India and Ors.*⁴;

5. *Mohan Lal Vs. Management of M/s. Bharat Electronics Ltd.*⁵.

21. Finally, the learned counsel prayed for directions upon the respondent authority to re-instate the petitioner in service with continuity and all consequential benefits or alternatively, in the event re-instatement is not found feasible grant compensation equivalent to full back wages, gratuity, retiral benefits and regularisation benefits at Par with similarly situated employees.

22. Per contra, the Learned counsel for the respondents vehemently opposed the prayer made by the petitioner and further submitted that the Tribunal has reached its finding after appreciating the entire evidence adduced by the parties and passed its Award based on admissible materials evidence as such it does not require interference since the High Court in its writ jurisdiction cannot sit as a court of appeal to assess such finding of Tribunal as such the writ petition is liable to be dismissed.

³ (2007) 13 SCC 292;

⁴ 2024 SCC Online SC 3826;

⁵ (1981) 3 SCC 225.

- 23.** The learned counsel further submitted that the petitioner was initially appointed as sweeper on temporary basis for two months and three months' time to time purely on temporary basis.
- 24.** The employment Exchange sent three persons for interview for filling up the temporary vacancy of Sweeper for a period of three months. Sri Ashok Hela, the petitioner herein was found suitable and was recommended for filling up the temporary post of Sweeper for a period of three months from the date of appointment.
- 25.** It was further submitted that the appointment was specifically in the River Training Wing, which was a project work, temporary in nature, and the persons were appointed temporarily for specific period. Some were taken from the other Departments of the KoPT now Shyama prasad Port Trust. After the closure of the project, those who were recruited from different sections were returned to their respective sections and jobs of those persons recruited temporarily from open market were terminated.
- 26.** The petitioner's last appointment letter dated 11.02.1992 was specifically for three months, and even though according to the same, he should have continued till 11.05.1992, his job was terminated with effect from 01.04.1992 due to administrative reasons. He was paid a Salary up to March, 1992. Therefore the learned Tribunal has rightly held that the term "retrenchment" was not attracted in the

case of the Petitioner's termination. At best he is entitled to wages for the period as engaged. Finally, he prays for dismissal of the writ petition.

- 27.** Having heard the arguments and submissions of the learned counsels representing the respective parties and upon perusal of the material available on record, this Court finds that the Petitioner was appointed as Sweeper in the year 1992 for a period of three months and thereafter again for three months on different occasions. The length of service was for a maximum period of three months. On several occasions he was appointed, but the length of service was not more than three months, with a further condition stipulated therein that service is terminable on 24 hours' notice from either side.
- 28.** The matter was escalated to the Division Bench of this High Court, and based on the final direction of the Division Bench, the Tribunal heard the matter afresh, giving an opportunity of hearing to the parties.
- 29.** The Central Government Industrial Tribunal at Kolkata finally passed an Award on 23rd December, 2008, after analysis and consideration of the evidence, both oral and documentary, adduced by parties, and held, inter-alia, as follows:

“18. Thus, in view of the aforesaid facts and circumstances it is evident that the workman by his appointment letter dated 11.02.1992. Ext. W-10 got his appointment for a fixed term of 3

months only and his service could very well be so terminated as per its conditions so mentioned therein by Clause 4 of this letter, i.e., the service of the workman could have been terminated on 24 hours notice from either side. Such termination, either on non-renewal of service of contract of on expiry of fixed term contract cannot be said to be a retrenchment as held by the Hon'ble Rajasthan High Court in somewhat similar circumstances in Ram Prasad & etc. v. State of Rajasthan & Ors. (1992 LAB. I.C. 2139 wherein after reviewing number of cases of the Hon'ble Apex Court it so held that such termination of service under a contract vide Section 2(oo)(bb) of the Act are not violative of the Articles 14, 21 and 39(d) of the Constitution merely on the ground that it could be misutilised by unscrupulous employers. The Hon'ble Court has said that the provisions of Section 2(oo)(bb) of the Act are not arbitrary or unconstitutional as follows:

"..... It can be possible that the work may be of a permanent nature and the unscrupulous employer in order to avoid regularization of the services of employees may resort to fixed term appointments but that does not render the provisions of S. 2(oo)(bb) of the Act as arbitrary. Simply a provision is being misused by unscrupulous employer, it cannot make that provision arbitrary. The work may be of a casual nature and may be of a limited scope and in such cases, the employer cannot be saddled with making permanent employment and, therefore, this provision by itself is neither unreasonable nor arbitrary. If the Court comes to a conclusion that the provisions of S. 2(oo)(bb) of the Act are being misutilised by unscrupulous employers, it can grant relief to the employees, in this view of the matter, we are unable to hold the provisions of S. 2(oo)(bb) of the Act as arbitrary being violative of the provisions of Arts. 14, 19, 21, 23 and 39(d) of the Constitution."

In another case the Hon'ble Madras High Court in 1993-I-LLJ-103 also held that sub-clause (bb) of Section 2(oo) of the I.D. Act does not offend the provisions of Part-III of the Constitution of India and it is valid and constitutional. It is also evident that it does not run counter to the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act and the expression retrenchment used in those sections must be understood only in the way in which it is defined in Section 2(oo) of the I.D. Act. Thus it has been held by it as well that Sub-clause (bb) of Section 2(oo) of the I.D. Act is constitutionally valid and quite enforceable as well in this regard. The workman having got his appointment for three months and reengaged in broken spells intermittently from 09.04.1990 to 01.04.1992 goes to show that occasionally the employment that was given to the workman was for specific periods on contractual basis only on eight occasions and so he was put off duty from time to time on completion of the aforesaid contractual periods for which he had been so appointed on eight occasions. This termination based on contractual relationship between the parties as such on the basis of the aforesaid appointment letters which were given to the workman, the termination of his services as per provisions of Section 2(oo)(bb) of the Act legally could not be termed as retrenchment as so defined in the Act for this purpose. There is no question of any violation made by the management of any such statutory provision of Section 25F of the Act as alleged on behalf of the management in this connection as the management was within its legal right to do so for passing the impugned order of termination of services of the workman concerned once the conditions mentioned in the appointment letter, Ext. W-10 were so followed by it. There is

thus no question of granting of any relief to the workman by setting aside the termination order so passed against him or to make any such order for his reinstatement in the service to the project as on its own showing it itself came to an end on 30th June, 1992 and therefore, after 30th June, 1992 there could be no such post available to the management where the workman could be so reappointed as it is so claimed by him in this regard.

19. As regards any relief or compensation to be so awarded to the concerned workman on account of the fact that it is admittedly a case of premature termination of his service by the impugned order so passed against him by the management, it is evident that the admitted case of both the parties as mentioned above goes to show that the project for which the workman had been appointed could very well have continued for a period of three months, i.e., upto 11.05.1992 whereas the workman had been put-off from his duties as Sweeper with effect from 01.04.1992 about a month or so earlier to this. The project was closed with effect from 30th June, 1992 and therefore, the workman could very well have so continued upto that date, had his services were not so terminated by the management through this letter of termination, Ext. W-17 in this regard. The management for this has only stated that this order of termination was passed by it on account of some administrative reasons which has not been so disclosed or specified either in its pleadings or even by the statement as it was so given by its witness, MW-1. Subir Kumar Sengupta who on his part expressed his inability to tell the reasons behind passing of this order. He also admitted in his cross-examination

that there was no occasion to stop the work of the concerned workman prior to the completion of the period for which he had been so appointed. It is also evident that after the termination of his services, the work of the Sweeper was there in the project and for this the management had taken the services of the outsiders.

20. Considering all these facts and the terms of the appointment letter dated 11.02.1992, Ext. W-10, the workman concerned could very well have so continued to work in the project upto 11.05.1992 or even upto completion of it till 30.06.1992 when it was so closed later on and so it appears just and proper that in light of this fact and evidence as led by both the sides it was a case of unjustified premature termination of services of the workman and so the workman concerned deserves to be granted some relief as compensation to be awarded in his favour as he also remained unemployed for the last so many years and is so even at present and considering all these facts and circumstances the concerned workman may be awarded a compensation of Rs.25000/= for loss of his job and services which otherwise could very well have continued upto 30.06.1992 till the project was so closed or at least till 11.05.1992 till the period of three months for which he was appointed in terms of his appointment letter Ext. W-10 in this regard.

21 In the result, the action of the management of Kolkata Port Trust in terminating the services of Shri Ashoke Hela, Ex-Sweeper, Office of the Deputy Chief Engineer, River Training Wing, Kolkata Port Trust w.e.f. 01.04.1992 is held to be quite legal. However, as held above the management is directed to

pay a lump sum compensation of Rs.25000/= (Rupees Twenty-five thousand) to the concerned workman looking at the facts and circumstances of this case as stated above.”

30. In the above back drop, this Court is of the opinion that the Tribunal has rightly decided the issue involved around the writ petition and thus calls for no interference as the petitioner was appointed as “Sweeper” for a limited period at a time, i.e. two months and three months, with an option that his service is terminable on 24 hours’ notice from either side. The Petitioner’s service was terminated prior to expiry of the actual period of service. Therefore, he is entitled for compensation as awarded by the Tribunal. Rs.25,000/- was awarded in compensation in favour of the petitioner. However, this court directed the Respondent concerned to pay the said sum of Rs. 25,000/= along with interest @ 7% simple interest till final payment, if the aforesaid amount has not yet paid. The Award dated 23rd December, 2008 is hereby modified to the aforesaid extent. Judgments relied upon by the petitioner herein above mentioned are no manner of application in the present facts and circumstances of the writ petition.
31. In the light of above observation, **WPA 18673 of 2009** is disposed of without any order as to costs.
32. Interim order, if any, stands vacated.

- 33.** All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.
- 34.** Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.