ANNEXURE P-1

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IN THE COURT OF SHRI UMED SINGH GREWAL
PRESIDING OFFICER : LABOUR COURT
XVII:KKD:DELHI

DID No.56/10.
Unique ID No.02402C0149092010.

Smt. Radha
W/o Sh. Pati Ram,
R/o House No. 1791, Gautampuri,
Phase-5, Modebandh, Badarpur,
New Delhi-110044.
Second address :
C-381, Holambi Kalan,
Metro Vihar, J.J. Colony,
Delhi-110082.

.....*Workman*

Versus

The Commissioner,
Food and Civil Supplies Deptt.,
Govt. of NCT of Delhi,
Vikas Bhawan, I.P. Estate,
New Delhi-110002.

.....*Management*

DATE OF INSTITUTION	:	28.05.2010.
DATE ON WHICH AWARD RESERVED	:	04.03.2015.
DATE ON WHICH AWARD PASSED	:	05.03.2015.

AWARD :-

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1. This is a direct industrial dispute filed by the workman under the Industrial Disputes Act (hereinafter "the Act") against the management.

2. Claimant's case is that she was appointed as Safai Karamchari (full day worker) by the State Commissioner, Vikas Bhawan, New Delhi vide order No.F.1(569)/Admn./SC/2007 dated 04.09.2008, 23.07.2008 and 30.10.2007. Her services were confirmed and approved by the HoD i.e. Secretary-Cum-Commissioner (Food Supply and Consumer Affairs Deptt.). (P-4/C) as per provisions vide Finance General Deptt. Circular No.F-13/Fin./G/2003-2004/1035-1285 dated 09.10.2003. She was appointed on 01.07.2007 and her services were continued till 31.12.2009 when she was unceremoniously shown the doors without giving any notice and retrenchment compensation for which she issued a legal notice dated 22.01.2010 through her counsel. She is seeking reinstatement with full back wages and continuity of service.

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Seal of the Distt & Sessions KKD, Court

3. Written statement is to the effect that the management is not a 'industry' as per the Act as it is a department of Government of NCT and hence it cannot be termed as an industry. Earlier, the workman was appointed as part time Safai Karamchari w.e.f. 01.07.2007, but subsequently, keeping in view the requirement, she was taken as full time worker purely on contractual basis for a period of three months initially on daily wages basis and contractual employment was renewed from time to time for three months each time and it came to an end finally on 31.12.2009. Regarding issuance of I. Card, it is stated that it was issued merely as a pass to enter the office.

4. Following issues were framed on 11.03.2011 :-

1. *Whether the workman was employed on contractual basis? OPM*
2. Whether the management is an 'industry' as defined u/s 2 (j) of the Industrial Disputes Act?OPW.
3. Relief.

5. On 23.01.12, the workman was examined as WW1. No one responded for the management and hence it was proceeded ex-parte. Since then, no one is coming forward for the

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Examiner

management. It did not lead any evidence.

6. In order to substantiate the claim, the claimant examined herself as WW1/1 by tendering affidavit in evidence as Ex. WW1/A. She relied upon legal notice dated 22.01.10 sent to the management as Ex. WW1/1; Ex. WW1/2 are the postal receipts, her I Card is Ex. WW1/3, Character Certificate issued by PS to the President of State Commission is Ex. WW1/4, Ex. WW1/5 is oder dated 04.09.2008 vide which the workman described as part time worker was engaged as Safai Karamchari to work full day in the State Commission w.e.f. 01.07.2008. Mark A is a letter written by Mr. R.S. Gupta, the-then Registrar, State Consumer Dispute Redressal Commission, Govt. of Delhi, New Delhi to SHO, PS Narela regarding character verification of the workman as she had been engaged in that office as part time worker. Mark B is the salary register.

Issue No. 1.

7. Ld. ARW submitted that onus of proof of this issue

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was on the management but it did not lead any evidence and hence the testimony of WW1 would prevail.

It is pertinent to mention that the management had taken the stand in the written statement that the claimant was engaged initially as part time Safai Karamchari from 01.07.2007. After some time, she was taken as full time Safai Karamchari on contractual basis. Her contract of employment was extended several times but only for three months every time which came to an end on 31.12.2009. Management did not examine any witness or placed on file any document to show that employment of the workman was only for limited period which came to end on 31.12.2009. It was held by the Hon'ble Supreme Court in ***S.M. Nilajkar and Ors. Vs. Telecom, District Manager, Karnataka,*** *AIR 2003 SC 3553* that :-

> *"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-*
> (i)that the workman was employed in a project or scheme of temporary duration;
> (ii)the employment was on a contract, and not as a daily-wager simplicitor, which

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provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(iii)the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(iv)the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily- wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that h is employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the

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termination of a scheme or project employee from the definition of retrenchment it is for th employer to prove the abovesaid ingredients so as to attract the applicability of Sub-clause(bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment."

8. The Hon'ble High Court of Punjab and Haryana laid down the following law in ***Bhikku Ram S/o Sh. Lalji Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court (1996) III LLJ 1126 P& H*** :-

"It will be the duty of the Court to determine the nature of employment with reference to the nature of duties performed by the workman and the type of job for which he was employed. Once the employee establishes that he was employed for a work of permanent / continuous nature and that employer has arbitrarily terminated his services in order to defeat his rights under

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the Industrial Disputes Act or other labour legislations, a presumption can appropriately be drawn by the Court that the employer's action amounts to unfair labour practice. In such a case, burden will lie on the employer to prove that the workman was engaged to do a particular job and even though the employee may have worked for 240 days such employment should be treated as covered by the amended clause because the service was terminated on the completion of the work. A stipulation in the contract that the employment would be for a specified period or till the completion of a particular job may legitimately bring the termination of service within the ambit of Clause (bb), However, if the employer resorts to methodology of giving fixed term appointment with a view to take it out of the Section (oo) and terminate the service despite the continuity of the work and job requirement, the Court may be justified to draw an inference that the employers' action lacks bona fide or that he has unfairly resorted to his right to terminate the service of employee."

9. Following observations of the Hon'ble High Court of Delhi in ***Sunder Singh Vs. P.O. Industrial Tribunal-I & Anr. in***

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Writ Petition Civil No.5454/1998 decided on 08.02.13 are relevant:-

> *"Therefore, in every case of termination of service of a workman, where the workman claims that he worked for a period of 240 days in a period of twelve months and termination of his service is void for want of compliance with the requirement of Section 25F and where the employer pleads that termination of service has been brought about in accordance with the terms of contract of employment or termination is as a result of non-extension of terms of employment, the Court will have to carefully scrutinise all the facts and apply the relevant provisions of law. It will be the duty of the Court to determine the nature of employment with reference to the nature of duties performed by the workman and the type of job for which he was employed. Once th employee establishes that he was employed for a work of permanent / continuous nature and that employer has arbitrarily terminated his service in order to defeat his rights under the Industrial Disputes Act or other labour legislations, a presumption can appropriately be drawn by the Court that the employer's action amounts to unfair labour practice. In such*

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a case, burden will lie on the employer to prove that the workman was engaged to do a particular job and even though the employee may have worked for 24 days such employment should be treated as covered by the amended clause because the service was terminated on the completion of the work. A stipulation in the contract that the employment would be for a specified period or till the completion of a particular job may legitimately bring the termination of service within the ambit of Clause (bb), However, if the employer resorts to methodology of giving fixed term appointment with a view to take it out of the Section 2(oo) and terminate the service despite the continuity of the work and job requirement, the Court may be justified to draw an inference that the employers' action lacks bona fide or that he has unfairly resorted to his right to terminate the service of the employee."

In view of above discussion, the management has failed to prove that the claimant's employment was on contractual basis for a limited period.

Issue No. 2.

10. Management had taken preliminary objection in

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written statement that it was not an industry as it was a department of Government of NCT of Delhi. Onus of proof of this issue was on the management, but id did not lead any evidence. In ***Management of Horticulture Department of Delhi Adm. Vs. Trilok Chand & Anr. (2000) I LLJ 614 Del***, the management of Horticulture had taken the objection that it was not an industry being a unit of development department which was an organ of Delhi Administration (now National Capital Territory of Delhi). The Hon'ble High Court relied upon ***Bangalore Water Supply and Sewage Board Vs. Rajappa (1978) ILLJ 349SC*** and held that *the Horticulture Department was an industry because it was passing the triple test for determining whether a particular establishment is "industry" or not. The triple test is whether (a) systematic activity; (b) organized by cooperation between employer and employee (the direct and substantial element is commercial); (c) for the production and / or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. It further held that true focus is functional and the decisive test is the nature of the activity with special*

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emphasis on the employer –employee relations. Relying upon that citations, it is held that management is an 'industry'. So this issue is also decided against the management and in favour of the workman.

Relief.

11. Ld. ARW argued that the workman had joined work with the management for two and half years when her services were terminated. Now a days she is jobless. He requested reinstatement with full back wages and continuity of services and in this regard he relied upon (a) ***Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), (2010) II LLJ678 SC,*** (b) ***Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana) (2010) 5 SCC 497,*** (c) ***Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Ors. (1984) SCC 635,*** (d) *Haryana Roadways, Delhi Vs. Thana Ram, LPA 587/12 decided on 27.08.12* and (e) *Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 3SCC 192.*

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12. It is settled law that even in case of illegal termination reinstatement is not automatic. In ***Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709***, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages and observed in paragraphs 27 and 28 as under :-

> *"27. We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.*
>
> *28. Considering the facts of this case, we are persuaded to award compensation in*

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lieu of reinstatement and back wages to the workman"

13. In **Municipal Council, Sujanpur Vs. Surinder Kumar 2006 LLR 662**, Hon'ble Supreme Court observed that the relief of reinstatement is not automatic but is in the discretion of the court. In paragraph 16, it was observed as under :-

> *"Apart from the aforementioned error of law, in our considered opinion, the Labour Court and consequently the High Court completely misdirected themselves insofar as they failed to take into consideration that relief to be granted in terms of section 11A of the said Act being discretionary in nature, a Labour Court was required to consider the facts of each case therefor. Only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same would be granted automatically".*

14. In *Vinod Kumar & others vs Salwan Public School & others WP(c)5820/2011 dt.17.11.2014* Hon,ble Justice V. Kameshwar Rao has held as under:-

> 11.Having considered the rival submissions of the counsels for the parties, I do not find

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any infirmity in the order of the Labour Court. It is a settled position of law that even if termination has been held to be illegal, reinstatement with full back wages is not to be granted automatically. The Labour Court is within its right to mould the relief by granting a lump-sum compensation. In fact, I note that the Labour Court has relied upon three judgments propounding the law that the Labour Court can mould a relief by granting lump sum compensation; the Labour Court is entitled to grant relief having regard to facts and circumstances of each case.

12. Further, the Supreme Court in the following judgments held as under:

(a) In the matter reported as Jaipur Development Authority v. Ramsahai, (2006) 11 SCC 684, the court has stated:

"However, even assuming that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India,

having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs 75,000 is awarded to the respondent by way of compensation as has been done by this Court in a number of its judgments."

(b) In the matter reported as Nagar Mahapalika v. State of U.P., (2006) 5 SCC 127, the court has stated:

"23. Non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

25 .....The appellant herein has clearly stated that the appointments of the respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of the Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefor having come to an end. It, therefore, in our considered view, is not a case where the relief of reinstatement should have been granted."

(c) In the matter reported as Talwara Coop. Credit and Service Society Ltd. v. Sushil Kumar, (2008) 9 SCC 486, the court has stated:

"8. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages

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is also not automatic. The Industrial Courts while exercising their power under Section 11-A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and mannet of recruitment viz. whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration."

(d) In the matter reported as Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, the court has stated :

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that 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. ...

14. An order of retrenchment passed in violation of Section

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25-F although may be set aside but an award of reinstatement should not, however, be 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 wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

15. The Apex Court held in ***Haryana Urban Development Authority Vs. Om Pal (2007) 5 SCC 742*** that *"the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation containing in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effect in terms of the statutory provisions operating in the field, if any."*

In ***Talwara Co-operative Credit and Service Society Limited v. Sushil Kumar (2008) 9 SCC 486***, the Supreme Court observed that *grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. For the said purpose, certain relevant factors, as for example, nature of service,*

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the mode and manner of recruitment viz. Whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc. should be taken into consideration.

In ***Asst. Engineer Rajasthan Development Corporation and Anr. Vs. Gitam Singh, (2013), SCC 136***, the Apex Court held *"the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. In so far as wrongful termination of daily rated worker is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction be drawn between daily wager and an employee holding the regular post for the purposes of consequential belief."*

16. In the present case, it is the version of the claimant herself duly admitted by the management that she worked for the

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management from 01.07.2007 to 31.12.2009 i.e. she worked only for two years and six months. Document i.e. Ex. WW1/5 relied upon by workman herself shows that she was a daily wager. Taking into the proposition of law laid down by the Hon'ble Apex Court, reinstatement and full back wages is not the just relief. In lieu of those reliefs, a lump sum compensation of Rs.60,000/- (Rupees Sixty Thousand) is granted. Award is passed accordingly. The management is directed to pay the said amount to the workman within a month from the date of publication of this award, failing which it shall be liable to pay interest @12 per cent per annum from today till realization.

17. The requisite number of copies be sent to the Govt. of NCT of Delhi for publication of the award. File be consigned to record room.

Dictated to the Steno & announced in the open Court on 05.03.2015.

(UMED SINGH GREWAL)
POLC-XVII/KKD, DELHI.

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