IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No.221/2015

Shri Jai Bhagwan,
S/o late Shri Daya Nand,
C/o Shri Anuj Aggarwal,
Aggarwal Bhawan,
GT Road, Tis Hazari,
New Delhi 110 054

.....Workman

Versus

The Commissioner,
North Delhi Municipal Corporation
4th Floor, Civic Centre, Minto Road,
New Delhi 110 002

.....Management

AWARD

A reference was received in the present from Ministry of Labour vide letter No.L-42012/166/2015-IR(DU) dated 05.10.2015 for adjudication of dispute with the following terms of reference:

> 'Was the termination of Shri Jai Bhagwan without assigning any reason is justified as per provisions of law? If not, to what relief is the workman entitled?

2. Facts of the case as contained in the statement of claim are that Shri Jai Bhagwan, the workman herein joined services of Municipal Corporation of Delhi the management, in Horticulture Department with effect from 23.10.1993 as mali. He was being treated as daily rated/casual/muster roll worker and was being paid fixed wages, which were being revised from time to time under the Minimum Wages Act. Other facilities, like uniform, earn leave, casual leave, gazette holidays, festival and restricted holidays which the other counter parties were also denied to the workman herein. The workman herein has an unblemished and uninterrupted record of service. Services of the workman was terminated with effect from 25.01.1996 without assigning any valid reason and said action of the management in terminating services is alleged to be totally illegal, bad, unjust and malafide and without following any legal procedure. Action of the management amounts to unfair labour practice as provided in Section 2(ra) read with Item No.5 of the Fifth Schedule of the Industrial Disputes Act, 1947(in short the Act) and the same is in violation of provisions of the Act. The workman has in fact worked for more than 240 days continuously in a calendar year for the purpose of 25(B) of the Act. Claimant has been meted out with hostile discrimination as juniors to him have been regained while the workman herein has been thrown out of job, which is in violation of Section 25 F, G, H and N of

the Act read with rule 76, 77 and 78 of the Central Industrial Rule 1957. Finally, prayer has been made for reinstatement of the workman with full back wages.

2. It is clear from the record of the case that nobody appeared on behalf of the management, as such, management was proceeded ex-parte vide order dated 17.03.2016. Thereafter, ex-parte evidence of the claimant was recorded. Claimant examined himself as WW1 and tendered in evidence documents Ex.WW1/1 to Ex.WW1/8.

3. It is clear from perusal of affidavit Ex.WW1/A that the averments contained in the affidavit are on the same lines as the facts mentioned in the statement of claim. The workman has also deposed that his job is perennial in nature.

4. It is evident from perusal of document Ex.WW1/1 that the workman has filed application before the Deputy Director (Horticulture) seeking relevant information regarding employment and engagement of beldars. Ex.WW1/2 shows that information was also sought by the workman under RTI Act and it was replied vide letter dated 17.01.2012. Workman herein was daily wage beldar for different days as per list enclosed. He was engaged from time to time whenever muster roll was got sanctioned by the department for specific work and period and his services were not regularized. It is further clear from details of the salary annexed with Ex.WW1/2 that right from December 1993 till 10.10.1996 the claimant was engaged for different period and his attendance was also duly marked in the muster roll enclosed with the said documents.

5. Workman has also filed copy of the demand notice Exc.WW1/3 wherein he has mentioned about his engagement as mali/beldar on 23.12.1993 and his termination on 25.01.1996. Ex.WW1/5 shows that the matter was taken before the Assistant Labour Commissioner averring that he was employed by the management in its Horticulture Department on 29.12.2013 as daily wager muster roll worker for a short period for seasonal work and further it is mentioned that the workman worked only upto 28.01.1994. However, in the subsequent para it is mentioned that the workman also worked from 10.07.1995 to 09.09.1995 and from 26.11.1995 to 25.01.1996 for 48 and 52 days respectively only. It is thus clear from the resume of evidence on record that the workman was admittedly engaged by the management as daily rated/casual labour and he was performing his duties till the date of his termination on 25.01.1996. Statement of the claimant in his affidavit, Ex.WW1/A is clear and remains un-rebutted as the workman has not been subjected to any cross examination by the management, who has been proceeded ex-parte on 17.03.2016. Since evidence led by the workman to the effect that he was continuously engaged by the management for the date of his engagement till his termination in the year 1996 remained unrebutted, as such, it is held that the workman has worked continuously with the management.

6. It is pertinent to mention here that even a daily or casual worker also falls within the ambit and scope of the definition of 'workman' as defined under section 2(s) of the Act, which definition is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
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> (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or
> (ii) Who is employed in the police service or as an officer or other employee of a prison , or
> (iii) Who is, employed mainly in a managerial or administrative capacity, or
> (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

7. It is clear from the records that the workman herein was engaged on daily or casual basis, as such, workman in the present case would fall within the definition of 'workman'. The question whether daily wager or casual labour is a workman as defined under Section 2(s) of the Act came for consideration before the Hon'ble Apex Court in the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, it was held as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the 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.
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> 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 a 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.
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> 15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational,

technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.

8. In Jasmer Singh vs. State of Haryana (2015 (1) SCALE 360), Hon'ble Apex Court dealt with the question of grant of back wages where termination of the job of a daily paid worker who worked for 240 days in a calendar was found to be illegal, null and void.

9. In the present case, claimant has specifically deposed in his affidavit, Ex.WW1/A, that he is out of service after his termination. In such a situation, Tribunal is of the view that claimant is entitled to be paid back wages in the wake of the ratio of law in Jasmer Singh case (supra), wherein it was observed as under:

> The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

10. Admittedly, in the present case, no notice was served by the management as required under Section 25 F of the Act. Workman has also stated that he was doing similar work which was being performed by other daily wagers and juniors to him have also been retained in service while he has been thrown out of the job. Since provisions of Section 25-F of the Act are mandatory in nature, which clearly provides that a workman employed in any establishment who has put in continuous service for less than 240 days, shall not be terminated or retrenched unless the workman has been given one month notice in writing or one month salary in lieu of such notice is to paid to such workman. In the case in hand,

management has not adduced any evidence so as to rebut the case of the workman, as such, this Tribunal is left with no choice except to believe the version of the workman contained in statement of claim and duly supported by him in his evidence while appearing as WW1, coupled with documentary evidence on record. Law is fairly settled that if averments made in the plaint or statement of claim is not specifically denied by the other party and the said party has also not entered into the witness box so as to rebut the claim of the claimant, in that eventuality, court can believe the version of such a claimant and draw adverse inference against the party who has not appeared before the Court or Tribunal. It is clear from the evidence discussed above that the workman herein was not served with any kind of notice before his termination. As such, there is clear cut violation of provisions of Section 25-F of the Act and even provisions of Section 25-G have also been violated as juniors of the workman have been regularized and retained in service while the workman herein has been thrown out of the job. Principle of last come, first go appears to have been not followed by the management.

11. As a sequel to my above discussion, it is held that termination of services of the claimant herein is illegal and in violation of principles of natural justice and also in violation of provisions of Section 25-F, G, H and N of the Act read with Rule 76, 77 and 78 of the Central Industrial Rules. Consequently, the workman, Shri Jai Bhagwan, is liable to be reinstated in service with full back wages and all consequential benefits, as the work against which he was working is perennial in nature. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

(A.C. Dogra)
Presiding Officer
Central Government Industrial Tribunal-cum-
Labour Court No.1, Karkardooma Courts Complex,
Delhi

Dated : November 28, 2016

COMPARED

ATTESTED
12/4/17
SECRETARY