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

\+ **WP(C) No.16191/2004**

% **Date of decision: 24th February, 2010**

MANAGEMENT OF M/S GARRISON ENGINEER ..... Petitioner
Through: Mr. A.K. Bhardwaj, Advocate

Versus

BACHHU SINGH ..... Respondent
Through: Mr. Anuj Aggarwal, Advocate

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. This writ petition seeks quashing of the award dated 31st March, 2004 of the Labour Court, finding that the respondent/workman had upon being engaged as a casual worker as a Switch Board Attendant with the petitioner (Garrison Engineer, Palam (North), Air Force), had completed 240 days in service before his termination and holding the termination to be bad under Section 25 F of the Industrial Disputes Act and directing the petitioner to reinstate the respondent with continuity in service and of other consequential benefits. However, the respondent/workman was denied the relief of back wages. This Court vide order dated 23rd February, 2005 stayed the operation of the award and the said order has continued till now. Vide order dated 30th January, 2008, the application of the respondent/workman under Section 17 B was allowed and the petitioner was directed to pay to the respondent the last drawn wages or the minimum wages whichever is higher from the date of the award and during the pendency of this petition subject to the respondent/workman filing an undertaking that in the event of the petition being allowed, he shall refund or repay the difference of last drawn wages and minimum wages.

2. The contentions of the counsel for the petitioner are :-

(i) That recruitment to the post of Switch Board Attendant is to be as per the statutory rules and the respondent/workman was not selected in terms of the said rules but was engaged merely as a casual worker.

(ii) That he had not completed 240 days of service and had merely worked for 75 days. Reliance in this regard is placed on the statement of case dated 27th August, 1993 and the letter dated 24th December, 1991 of the officials of the petitioner and the affidavits filed before the Labour Court of the officials of the petitioner and the written submissions filed before the Labour Court. It is further contended that the onus was on the respondent/workman to establish that he had completed 240 days of service and on enquiry as to how, it is stated that the said onus ought to have been discharged by proof of gate pass and salary receipts. On further enquiry as to whether the petitioner in the cross examination of the respondent/workman before the Labour Court asked the respondent/workman to produce the said documents, the answer is in the negative. It is contended that the Labour Court erred in not believing the audit report for wages filed by the petitioner stating that the respondent/workman has worked for 75 days only and in disbelieving the same.

(iii) That the rule of 240 days does not apply when the appointment to a particular post, as per the statutory rules, are to be done in a particular manner. It is argued that casual employment for no length of time can entitle such casual workers to appointment which is not as per statutory rules. Reliance is placed on ***Himanshu Kumar Vidyarthi Vs. State of Bihar*** (1997) 4 SCC 391 to contend that disengagement of temporary employees is not retrenchment.

Reference is made to ***Jaipur Development Authority v. Ram Sahai*** JT (2006) 9 SC 520 to contend that even where a violation of Section 25G & Section 25H of the Act is held to have taken place, the same by itself would not mean that the award of reinstatement should be made. In that case, the relief of reinstatement was reversed for the reason of the workman having

not been employed in accordance with the rules of recruitment, the job being of a perennial nature and there being nothing to show that when the services of the workman were terminated persons junior to him in the same category, had been retained and for the reason of long delay since the dispensation of the services. It is further contended that in the present case, casual workers similarly situated as the petitioner had approached the Central Administrative Tribunal and thereafter the Supreme Court and were not allowed to be absorbed and the petitioner who has taken the route of the Labour Court ought not to be granted the relief of reinstatement.

(iv) It is further contended that while admittedly the respondent/workman was not given work from August, 1986 onward, he sent the first notice for demand on 11th June, 1991 only and the reference to the Labour Court was ultimately made on 17th November, 1992. Reliance is placed on ***Ratam Chandra Sammanta Vs. The Union of India*** JT 1993 (3) SC 418 where the claims preferred after a long time, in that case of 15 years, were held to have deprived the casual workman of any remedy and ***Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal*** JT (2006) 6 SC 50 where also for the reason of a belated claim, the relief of reinstatement was denied.

3. Per contra, the counsel for the respondent/workman has drawn attention to the award to contend that the Labour Court has given valid reasons for holding / presuming the respondent / workman to have completed 240 days of service. It is urged that not only did the petitioner fail to produce the muster roll inspite of being summoned but there were inconsistencies/contradictions in the statements of the witnesses of the petitioner. It is also urged that the said question ought not to vex this Court inasmuch as the petitioner itself vide order dated 19th January, 1988, proved before the Labour Court, had admitted that the respondent had been working on CP/ Muster Roll for minimum period of 240 days and was directed for the trade test of Switch Board Operator to be held on 20th January, 1988. He relies on ***Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda*** 2009 XII AD (SC) 184 where there was a delay of 4 years and 5 months and it was held that the same was not fatal and only calls for the relief being moulded accordingly. It is urged that in the present case, owing to the delay the Labour Court has not granted the relief of back wages to the respondent/workman and no

error capable of interference can be found with the award. Reliance is also placed on ***Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited*** AIR 1999 SC 1351 laying down that the provisions of Article 137 of the Schedule to Limitation Act are not applicable to the proceedings under the Industrial Disputes Act. It is further contended that by virtue of Section 25J, the Industrial Disputes Act overrides the statutory rules of recruitment to the post of Switch Board Operators. To meet the argument of the petitioner on the basis of ***Himanshu Kumar Vidyarthi*** (supra) reliance is placed on ***Management of Horticulture Department of Delhi Adm. v. Trilok Chand*** 82 (1999) DLT 747 holding that the said judgment does not take into consideration the earlier judgments holding to the contrary. Lastly reliance is placed on ***Delhi Cantonment Board v. Central Govt. Industrial Tribunal*** 129 (2006) DLT 610 where the Division Bench of this Court held that in Labour Law there is no distinction between a temporary and a permanent employee. It is also urged that though not part of the award but else the petitioner admits that fresh employments have been made to the said post.

4. The counsel for the petitioner in rejoinder has contended that the letter dated 19th January, 1988 (supra) recording that the respondent had been working for the minimum period of 240 days is apparently erroneous inasmuch as the same is contrary to the identity card issued to the respondent. He seeks to distinguish the judgment in ***Ajaib Singh***(supra) by contending that no plea of delay had been taken therein. Similarly, ***Director, Fisheries Terminal Division*** (supra) is distinguished by contending that in that case fellow employees of the workman had been absorbed discriminating against the workman in that case.

5. The finding of the Labour Court in the present case to the effect that the respondent/workman completed 240 days of service cannot be disturbed by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The said finding is supported by reasons and it is not been shown that the said reasons are without any basis. This Court in these circumstances cannot re-appreciate the evidence or substitute its own finding on a question of fact.

6. I may observe that recently the Supreme Court in ***Harjinder Singh Vs. Punjab State Warehousing Corporation*** MANU/SC/0060/2010 has held that the Courts are to ensure that a workman who has not been found guilty cannot be

deprived of what he is entitled to get; that when a workman has been illegally deprived of his employment, then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to him. Damages were held to be a poor substitute for reinstatement. The two Judge Bench of the Supreme Court though noticed that of late there had been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations as the Industrial Disputes Act held that the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principle of State Policy constitute an integral part. It was held that justice due to the workman should not be denied by entertaining specious and untenable grounds put forward by the employer. The Supreme Court restored the order of the Labour Court of reinstatement with back wages and set aside the order of the High Court of compensation in lieu of reinstatement.

7. However, I find that another Bench of two Judges of Supreme, Court also recently, in ***Jagbir Singh v. Haryana State Agriculture Marketing Board*** AIR 2009 SC 3004 has awarded compensation in lieu of reinstatement.

8. The question which arises is as to which judgment of the aforesaid two, of the Supreme Court is to be followed in the present case. I have perused the facts of each of the two cases minutely. In ***Harjinder Singh*** (supra) the workman was in regular employment and whose designation during the course of employment had been changed from that of work charge Motor Mate to Work Munshi and who had also been given an increment. He was continued in service even beyond the tenure specified in the order passed by the official of the employer from time to time and was thereafter issued one months notice of termination by way of retrenchment. The plea of the employer in that case was that the project with which the workman was employed had been completed. Per contra, in ***Jagbir Singh*** (supra), the workman was engaged as a daily wager, as in the present case, and was being paid consolidated wages during his employment. It was held by the Supreme Court that "justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statute to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law. A person is not

entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance". It was emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative and reinstatement with full back wages cannot be the natural consequence and cannot be granted automatically only because it would be lawful to do so. It was held that several factors have to be considered, a few of them being as to whether appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. The Supreme Court in that case considering the factors, of the period during which the services were rendered, the fact that the respondent had stopped operations for which the workman was employed and considering the long time which had lapsed since the service had been terminated held the relief of reinstatement to be not appropriate. It was observed that the nature of appointment, the period of appointment, the availability of the job etc. should weigh with the court for determination of such an issue. It was further held that a superior authority as the employer in that case was, is obligated to make recruitment only upon compliance with the equality clause contained in the Constitution of India and any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. It was also not found to be in public interest to order reinstatement after a long lapse of time.

9. In the present case, the factors which lead me to hold that the respondent/ workman is not entitled to reinstatement but only to compensation in lieu of reinstatement are:-

(i) The admitted delay of about five years in raising the industrial dispute. The respondent / workman has also not challenged the award refusing back wages to him. From the said circumstances, it appears that the respondent / workman had keen up employment / vocation elsewhere and at least for that much time was not keen to continue in the service of the petitioner.

(ii) The employment being with the defence services.

(iii) The employment being for a maximum period of 240 days only.

(iv) If the respondent/workman is now reinstated with consequential benefits, it would disturb the harmony in the cadre and may lead to several other disputes.

(v) The respondent/workman having worked elsewhere for the last 23 years and it now being not in public interest to employ him in the defence services.

10. The next question which arises is as to the quantum of compensation. I had during the course of hearing enquired the age of the respondent/workman. It was informed that he was born in 1964 and would still have about 10 years of service left besides being entitled to family pension etc. Though I find that compensation of Rs.75,000/- only was given in ***Jagbir Singh*** (supra) but in the opinion of this Court in the facts of the present case compensation in such range would not be in lieu of reinstatement. Compensation ought to match the financial burden which the petitioner would avoid by reinstating the respondent/workman and by deducting there-from the value of the work which would be taken/would have been taken by the petitioner from the respondent/workman. The payments under Section 17B received by the respondent/workman and on enquiry informed to be approximately Rs.2,00,000/- are also a relevant criteria.

11. Considering all the aforesaid aspects and further considering that the petitioner is a technical person, compensation in the sum of Rs.4,00,000/- is found to be appropriate.

12. The counsel for the respondent / workman during the hearing had contended that the compensation now received would not be security as pension would have been to the respondent/workman. Considering the said aspect, it is deemed appropriate that the said sum of Rs.4,00,000/- be not released to the respondent / workman immediately and be kept in a fixed deposit initially for a period of five years. It is also directed that the respondent shall not be liable to refund any part of the amounts received under section 17B of the Act.

13. Accordingly, the writ petition is partly allowed. Instead of relief of reinstatement, the respondent/workman shall be entitled to compensation in terms of above.

No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

24th February, 2010
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