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

\+ **W.P.(C) 4872/2003**

% Reserved on: 4th July, 2012

Decided on: 23rd July, 2012

JAI BHAGWAN AND ORS. ..... Petitioner
Through: Mr. Anuj Aggarwal, Adv.

versus

MGT. OF MCD AND ANR. ..... Respondents
Through: None

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioners challenge the award dated 24th December, 2002 passed by the Learned Labour Court holding that the Petitioners failed to prove on record that the termination of their services by the Management was illegal and thus no consequential relief was granted. None is present on behalf of the Respondent No.1 despite pass-over. None was present on behalf of the Respondent No.1 even on 3rd July, 2012. Thus I have heard learned counsel for the Petitioners and perused the Record including the counter affidavit filed by the Respondent.

2. Learned counsel for the Petitioners contends that the termination of the Petitioners is in violation of Section 25F and 25G of the Industrial Disputes Act, 1947 (in short the ID Act) and Rule 77 of the Industrial Disputes (Central) Rules 1957 (in short the ID Rules). The Respondent has taken contrary stands, as before the Conciliation officer it was stated that the

services of the Petitioners were no more required and hence were terminated, whereas in the written statement filed before the learned Labour Court it was stated that the Petitioners had abandoned the job on their own accord and their services were not terminated. The Management Witness No.1 who appeared in the witness box admitted that no separate termination orders were issued to the Petitioners, and no service compensation was paid to them. It is further admitted that no seniority list was displayed by the Respondent either on 13th January, 1999 or before that, at the place of work of workmen, or at any other place. It is further submitted that no further service compensation was paid to the workmen concerned. It is admitted by Suresh Kumar Gupta MW-1 that the Petitioners were engaged on 28th March, 1996 and kept on working till 13th January, 1999. Learned counsel for the Petitioner states that since the appointments are made zone-wise, the Petitioners could have been transferred to Tikri Border market or directed to work as Chowkidars in the same zone at other place. No seniority list was ever published and thus the Petitioners could not show that the principle of 'last come first go' was followed. Reliance is placed on *S.M. Nilajkar and Ors. Vs. Telecom, District Manager, Karnataka (2003) 4 SCC 27; Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (Haryana) (2010) 5 SCC 497; Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) (2010) 3 SCC 637; The Management of MCD Vs. Presiding Officer, Industrial Tribunal in W.P.(C) 6024/1999 decided by Delhi High Court on 25.08.2011; Gaffar and Ors. Vs. Union of India and Ors. C.W.J.C. No. 1850/1980 decided on 07.02.1983 by Patna High Court*. Thus, the Petitioners had

completed more than 240 days in the preceding year and were entitled to the benefits under the Industrial Disputes Act.

3. The stand of the Respondent in the counter affidavit filed before this Court is that the Petitioners were engaged as daily wagers for a limited period of 89 days with effect from 28th March, 1996 for a limited purpose and Petitioner No.3 was engaged since 21st August, 1996 for a limited purpose and posted at PVC market at Jawalapuri. The Petitioners were paid fixed wages which were revised from time to time under the Minimum Wages Act. Since the PVC market was to be closed down as per the directions of this Court for the purposes of shifting the market from Jwalapuri, as such the services of the Petitioners were terminated with effect from 13th December, 1998. The notice of termination comprised of valid reasons for termination and the wages of the Petitioners were drawn up and information was given to the Petitioners, however they failed to collect their wages. The Petitioners were not employed as permanent employees and their engagement was only for a specific period and for temporary purpose/ project as daily wagers. There being no infirmity in the impugned award dated 24th December, 2002 the present petition be dismissed.

4. Learned Trial Court after hearing the parties and perusing the evidence of both the sides came to the conclusion that the Petitioners had been engaged by the Management in pursuance to the orders dated 22nd March, 1996 passed by the Delhi High Court purely on temporary basis for keeping watch and ward duties at PVC market, Jwalapuri. Since the PVC market already stood shifted, services of the claimants were not required any more and thus they were disengaged, and as the project came to an end the

termination is not illegal in view of the law laid down by the Hon'ble Supreme Court in *State of Rajasthan and Ors. Vs. Rameshwar Lal Ghelot 1996 (1) LNN 296*.

5. The facts in brief are that the Petitioners were employed as daily wage Chowkidars by the Respondents on 28th March, 1996 initially for a period of 89 days which engagement was continued by successive office orders. It is the case of the workmen also that their services were terminated as the PVC market shifted from Jwalapuri to Tikri Border, though no termination order was served on them. The order of appointment of the Petitioners read as under:

"MUNICIPAL CORPORATION OF DELHI

(NAJAFGARH ZONE)

NO.ZAC/NG/96/12 DATED: 4.4.96

OFFICE ORDER

As per approval of worthy Commissioner, Municipal Corporation of Delhi, dated 26.3.1996 the following persons are appointed as daily-wages Chowkidar for P.V.C. Market, Jawalapuri with effect from 28.03.1996 (F.N.). This appointment is made for 89 (eighty nine) days only. The duty hours will be 8.00 am to 8.00 pm and second shift will be from 8.00 pm to 8.00 am.

S.No. Name & Father's Name

1.	Sh. Satish Kumar	S/o Shri Amar Singh
2.	"Bhupender Kumar	S/o Jai Parkash
3.	"Surender Singh	S/o "Raghubir Singh
4.	"Rajesh	S/o "Mehar Chand
5.	"Ravinder	S/o "Sukhbir Singh
6.	"Sanjay	S/o "Jai Parkash

7. “Jai Bhagwan S/o “Om Parkash

Sd/-

(K.C. BHARDWAJ)
Administrative Officer
Najafgarh Zone

Copy to: All concerned.”

6. This order was extended from time to time till 31st December, 1998 when a notice under Section 25-F, 25-G of the ID Act was issued which was exhibited as WW1/16. As per this notice of retrenchment dated 31st December, 1998 the services of the workmen stood disengaged with effect from 31st December, 1998 itself. The reasons given in the notice was that the workmen were appointed purely on temporary basis for the purpose of manning barricades of PVC market, Jawalapuri pursuant to the orders dated 22nd August, 1996 passed by the High Court of Delhi in the case titled *GH-12 Residents Welfare Association Vs. MCD and Ors*. The workers were employed to keep watch and ward duties of PVC market, Jawalapuri. In pursuance of the ban imposed on the trade of PVC in the area dated 4th August, 1995 the market had already been shifted and the services of these workers for watch and ward duty were no more required. It was thus decided to disengage their services with immediate effect. It was further stated that they would be paid one month’s salary in lieu of the notice and in addition they would be paid 15 days average pay for every completed year of continuous service as compensation.

7. It is the admitted case of MW-1 Suresh Kumar Gupta that no separate termination orders were issued. It is also admitted that all the workmen kept on working till 13th January, 1999, though the workmen were asked to

collect salary for one month towards their notice but they declined and no service compensation was paid to the workmen concerned. However, the amount mentioned in the order dated 8th March, 1999 was offered to the workmen concerned i.e. on 8th March, 1999 and before that no offer was made. It was further admitted that no seniority list was displayed by the MCD either on 13th January, 1999 or before that at the place of work of workmen concerned or at any other office.

8. In *S.M. Nilajkar and Ors.* (supra) it was held:

> "12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that Parliament has employed the expression "the termination by the employer of the service of a workman *for any reason whatsoever*" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" *dehors* the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within categories (*a*), (*b*), (*bb*) and (*c*) would fall within the meaning of "retrenchment".
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> 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 simpliciter, which 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; and

(*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 up to the 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 his 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 complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the 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. 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 up to the 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 his 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 complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the 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."

9. A perusal of order of appointment reproduced above does not put to the notice of the Petitioners that they were engaged in a scheme or project which was to last only for a particular length of time or up to occurrence of some events, though a time was mentioned which time period was extended from time to time. Thus, there is nothing on record to show that the workmen were aware of the fact that they were employed on a scheme of project which was to come to an end. In *Anoop Sharma* (supra) their Lordships held:

16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (*a*) and (*b*) of Section 25-F of the Act are satisfied. In terms of clause (*a*), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (*b*) casts a duty upon the employer to pay to the workman *at the time of retrenchment*, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Sections 25-F(*a*) and (*b*) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity—*State of Bombay* v. *Hospital Mazdoor Sabha* [AIR 1960 SC 610] , *Bombay Union of Journalists* v. *State of Bombay* [AIR 1964 SC 1617 : (1964) 6 SCR 22] , *SBI* v. *N. Sundara Money* [(1976) 1 SCC 822 : 1976 SCC (L&S) 132] , *Santosh Gupta* v. *State Bank of Patiala* [(1980) 3 SCC 340 : 1980 SCC (L&S) 409] , *Mohan Lal* v. *Bharat Electronics Ltd.* [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] , *L. Robert D'Souza* v. *Southern Railway* [(1982) 1 SCC 645 : 1982 SCC (L&S) 124] , *Surendra Kumar Verma* v. *Central Govt. Industrial Tribunal-cum-Labour Court* [(1980) 4 SCC 443 : 1981 SCC (L&S) 16] , *Gammon India Ltd.* v. *Niranjan Dass* [(1984) 1 SCC 509 : 1984 SCC (L&S) 144] , *Gurmail Singh* v. *State of Punjab* [(1991) 1 SCC 189 : 1991 SCC (L&S) 147] and *Pramod Jha* v. *State of Bihar* [(2003) 4 SCC 619 : 2003 SCC (L&S) 545] .

18. This Court has used different expressions for describing the consequence of terminating a workman's service/ employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as *ab initio void*, sometimes as illegal per se, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of

> retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(*a*) and (*b*) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

10. Though the notice Ex.WW1/16 spells out that the employment was for a specific purpose, however the same was not spelt out in the letter of appointment Ex.WW1/12. It may be noted that at the time of retrenchment neither one month's salary was paid nor the compensation equivalent to 15 days average pay for every completed year of service or any part thereof was paid. The first order issued in this regard was on 8th March, 1999 i.e. after more than two months. The salutary purpose of granting one month's notice or compensation in lieu thereof is that the workmen may in the meantime look for another engagement and may not suffer during the said period.

11. For the reasons aforesaid, since there is violation of the provisions of the ID Act, the present petition is required to be allowed. However as held by the Hon'ble Supreme Court in *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr. 2009 (15) SCC 327* on termination being held illegal, the relief of reinstatement and back wages does not follow automatically. The relevant factors of the nature of appointment, period of appointment, availability of the post/ vacancy etc., should weigh with the Court for determination of such an issue. Keeping in view the fact that the job was temporary in nature for a particular purpose, I am of the view that the Petitioners are entitled to compensation in lieu of reinstatement. It is therefore directed that the Petitioners be paid compensation of Rs. 75,000/- each within four weeks.

12. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

JULY 23, 2012
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