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

\+ **W.P. (C) No. 4330/1997**

% Reserved on: 17th October, 2012
Decided on: 28th January, 2013

MGT. OF DELHI FINANCIAL CORPN. ..... Petitioner
Through: Mr. Vaibhav Kalra, Adv.

versus

P.O. LABOUR COURT & ANR. ..... Respondents
Through: Mr. Anuj Aggarwal, Mr. M.M. Saquib, Advs. for R-2.

\+ **W.P. (C) No. 75/1998**

DEVENDER KUMAR ..... Petitioner
Through: Mr. Anuj Aggarwal, Mr. M.M. Saquib, Advs.

versus

SECY. LABOUR, GOVT. OF NCT & ORS. ..... Respondents
Through: Mr. Vaibhav Kalra, Adv. for R-3.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these petitions both the parties have challenged the impugned award dated 14th February, 1997 whereby the termination of workman Devender Kumar was held to be illegal and unjustified and the management was directed to pay lump-sum compensation of Rs. 50,000/- to the workman. In W.P.(C) 4330/1997, the order dated 7th May, 1997 has also been challenged whereby the review application of the management was dismissed.

2. The grievance of the management in WP(C) No. 4330/1997 is that the termination of the workman was legal and justified and thus no award of

compensation could have been passed by the learned Trial Court. According to the management the case of the workman was covered under Section 2(oo)(bb) Industrial Disputes Act, 1947 (in short 'the ID Act) and since the termination was due to efflux of time for non-renewable of the contract in terms of the last letter, the termination could not have been held illegal. The Trial Court passed the impugned award on the erroneous reading of the affidavit of Mrs. Kiran Mahajan and it was observed that she has stated that the workman had worked for not less than 240 days whereas no such averment was made by the witness in her affidavit. The management filed the review application, though the error in the finding was accepted by the learned Trial Court, however it was held that it had no power to review its award. As per the rules applicable to the management it can employ Group 'C' and 'D' workers on temporary basis. Rules in vogue have not been challenged. The learned Trial Court went beyond the terms of reference as the terms were restricted to adjudicate whether the termination was illegal, whereas the learned Trial Court went on to hold that it was an unfair labour practice and in view thereof the termination was illegal. Neither the same was a term of reference nor any issue was framed in this regard. Reliance is placed on *Escorts Limited Vs. Presiding Officer and Anr.(1997) 11 SCC 521; Municipal Council, Samrala Vs. Raj Kumar (2006) 3 SCC 81; Punjab State Electricity Board Vs. Darbara Singh AIR 2006 SC 387; Kishore Chandra Samal Vs. Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal AIR 2006 SC 3613* and *The Haryana State Agricultural Marketing Board Vs. Subhash Chand and Anr.(2006) 2 SCC 794*.

3. Learned counsel for the workman on the other hand states that the case of the workman is covered by the decision of this Court in *The Management of CPWD Vs. Har Lal W.P.(C) No. 14238/2006 decided on 17th March, 2011*. Reliance is placed on *Bilori Vs. D.T.C in LPA No. 185/2006* decided on 25th May, 2009 to contend that the reference has to be construed liberally. The workman was not an ad-hoc employee but was getting a regular pay and thus could not be terminated under 2(oo)(bb) ID Act. Reliance is also placed on *Chartered Bank, Bombay Vs. Chartered Bank Employees' Union and Anr.* (*1960) 3 SCR 441* to contend that unfair labour practice is to be considered de-hors Section 2(oo)(bb) ID Act. Reliance is also placed on *Devinder Singh Vs. Municipal Council, Sanaur (2011) 6 SCC 584*. It is stated that the last contract has to be considered, as held in *Employers in Relation to Digwadih Colliery Vs. Their Workmen AIR 1966 SC 75*.

4. As regards the W.P.(C) 75/1998 learned counsel for workman states that the compensation awarded is extremely low and since the workman had worked for substantially long period, the workman was required to be reinstated with back wages. In any case the compensation awarded is too less. Reliance in this regard is placed on *Management of Garrison Engineer Vs. Bachhu Singh, 2010 (115) DRJ 576, Govt. of NCT of Delhi Vs. D.S. Gabba W.P.(C) 3659/1996 decided by this Court on 17th May, 2010* and *The Management of MCD Vs. P.O. Industrial Tribunal W.P.(C) 6024/1999 decided by this Court on 25th August, 2011;*.

5. I have heard learned counsel for the parties. Briefly the facts giving rise to the filing of the present petitions are that the workman was appointed as a Peon on temporary basis on 10th January, 1987 which appointment was

extended from time to time. The contracts were for the periods of one month, two months, three months etc., with gaps in between. However, the services of the workman were dispensed with effect from 22nd May, 1990 vide the termination letter Ex.WW1/18. The workman raised an industrial dispute which was sent for adjudication on the following terms:-

> "Whether the termination of services of Shri Devender Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

6. The case of the management was that the appointment of the workman was in terms of the contract entered into between the parties and when the contract came to an end by efflux of time, his services were dispensed with. On the basis of pleadings of the parties following issues were framed:

> "1. Whether the respondent is not an Industry within the meaning of Section 2(j) of the I.D. Act?
>
> 2. As in terms of reference."

7. As regards the first issue no arguments have been addressed by learned counsel for the management. Thus, the only issue required to be considered is whether the termination of workman was illegal or unjustified. While considering the legal issue of termination being illegal or unjustified, the issue of unfair labour practice is inbuilt therein. Even in a case where the termination takes place because of efflux of time or as per the terms of contract, the Court can lift the veil and find out whether there is an unfair labour practice adopted. In *Bhikku Ram, S/o Lalji Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court (1996) III LLJ 1126 (Punjab and Haryana*) while referring to paras 1 to 16 of Part I of the fifth Schedule to ID Act, it was held:.

"20…..Paragraphs 5 and 10 of the Fifth Schedule show that termination of service of workman by way of discharge or dismissal will be treated as unfair labour practice, if it is established that the same has been brought about by way of victimization or where the employer's action is not in good faith but is in the colourable exercise of the employer's rights, or where termination is for patently false reason or where there is an utter disregard of principles of natural justice in the conduct of enquiry or where the misconduct is of minor or technical nature. Similarly, where the employer engages workmen as "badli", casual or temporary and continues them in the same capacity for years together with the object of depriving them of the status and privileges of permanent workmen, the employer's action would be termed as unfair labour practice.

21. Therefore, while interpreting and applying various parts of Section 2(oo), the competent Court/ Tribunal shall have to keep in mind the provisions of Section 2(ra) read with Section 25 T and U and various paragraphs of the Fifth Schedule and if it is found that the action of the employer to engage a workman on casual basis or as a daily-wages or even on temporary basis for long periods of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation contained therein is an act of unfair labour practice, such an action of the employer will have to be nullified and the Court will be fully justified in rejecting the plea of the employer that termination of service of the workman does not amount to retrenchment but is covered by Clause (bb). In the context of various paragraphs of the Fifth Schedule, Clause (bb) which is an exception to the principal section will have to be given a narrow interpretation. This clause has the effect of taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer who, as already observed above, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-vis the workman

> or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee cannot possibly protest against the incorporation of arbitrary, unreasonable and even unconsciounable conditions of service in the contract of employment. Any such protest by the employee or a to be employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular event. In such a situation, if the Court finds that the conditions are arbitrary and unreasonable and the employer has forced these conditions upon a workman with the sole object of avoiding his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by Clause (bb) will be liable to be rejected."

8. In the present case on a perusal of the appointment letters exhibited it is evident that the Petitioner was employed for the following periods i.e. from 20th January, 1987 for a month, then again for a month with effect from 20th February, 1987. Thereafter for six months on 20th April, 1987. Thus a break was given in March. Thereafter again on 30th October, 1987 he was employed for a period of one month from the date of joining, thereafter for two months and so on and so forth till the date of termination i.e. 22nd May, 1990. The last contract of the workman with the management was for a period of three months from 23rd February, 1990. Thus, on efflux of the said time, no further appointment letter was issued. The job of a Peon is perennial in nature. From the various appointment letters it is evident that the work was being taken continuously from the workman.

9. The judgments relied upon by learned counsel for the management have no application as in the present case no doubt the contract had come to an end however on lifting the veil it would be seen that the workman's contract of service was being extended from time to time with artificial breaks and thus it is not a case covered under Section 2(oo)(bb) ID Act simplicitor. I do not find any infirmity in the impugned award passed by the learned Trial Court holding the action of the Petitioner as an unfair labour practice.

10. As regards the relief of compensation, it may be noted that the Petitioner was not a regular employee and his appointment was not through employment exchange. In view of the decision in *Jagbir Singh Vs. Haryana State Agriculture Marketing Boad and Anr. (2009) 15 SCC 327* the Petitioner is entitled to compensation. An award of compensation of Rs.50,000/- passed in the year 1997 cannot be said to be inadequate in view of the fact that the Petitioner had worked in Group 'D' post for nearly three and half years.

11. Petitions are dismissed.

(MUKTA GUPTA)

JANUARY 28, 2013
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