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

% Judgment reserved on :14.01. 2013
Judgment pronounced on: :21.01.2013

\+ **LPA 63/2012 and CM No.1722/2012(stay)**

NEW DELHI MUNICIPAL COUNCIL ..... Appellant

Through : Mr. Rajesh Mahajan with Mr. Piyush Gaur and Mr. Arun Bhardwaj , Adv.

versus

DEEPAK WADHWA .... Respondent

Through : Mr. Anuj Aggarwal, Adv. for Workman.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. On 14th September, 1992, the respondent was appointed as a Beldar with the appellant on muster roll, for a period of ninety days. Vide subsequent order dated 18th September, 1992, he was appointed in the same capacity, again for a period of ninety days. It was stated in the order dated 18th September, 1992 that his appointment will not confer any right for regular appointment and will automatically come to an end on the expiry of aforesaid period or could be terminated earlier, at any time,

without assigning any notice or without reason. Vide order dated 16th December, 1992, earlier appointment was extended till 7th March, 1993 on the existing terms and conditions. Vide order dated 4th February, 1993, the respondent was appointed as Attorney on a consolidated salary of Rs.1,784/- per month upto 28th July, 1993 only for a period of six months. Vide order dated 2nd August, 1994, which was the last appointment order issued to him, the respondent was appointed as Attorney on contract basis with effect from 6th June, 1994 on a consolidated salary of Rs.1,730/- per month and was posted in Law Department against one of the two posts meant for ST candidates, for a period of six months or till regular selection of ST category candidate, whichever was to be earlier. The services of the respondent were dispensed with vide order dated 8th August, 1994 with immediate effect, it would be pertinent to note here that, according to the appellant, in a meeting held on 20th July, 1994, the Selection Sub-Committee had selected two candidates to fill up the two posts meant for ST category candidates.

2. The respondent raised an industrial dispute which was referred to the Labour Court for adjudication. The plea taken by the appellant before

the Labour Court was that since a regular ST category candidate had been selected, it was decided to terminate the services of the respondent in terms of the appointment letter issued to him on 2nd August, 1994. The Labour Court vide order dated 29th November, 2000 held that dispensing with the services of the respondent was not justified and ordered his reinstatement. Being aggrieved from the award of the Labour Court, the appellant filed a writ petition which came to be dismissed while impugned judgment dated 19th December, 2011. Being dissatisfied, the appellant is before us by way of this appeal.

3. The Labour Court noted that the appellant had produced only six documents none of which disclosed selection of a ST category candidate for the post against which the respondent was appointed.

4. The question as to whether a ST candidate had actually been selected on 20th July, 1994 as claimed by the appellant or not is purely a question of fact, which cannot be gone into either in the writ petition was in the appeal arising out of the order passed in the writ petition. The onus was upon the appellant to prove, by leading evidence before the Labour Court that it had actually selected a ST candidate in the meeting held on 20th July, 1994. We note that before the Labour Court, the respondent

had disputed the selection of a ST candidate. It was, therefore, incumbent upon the respondent to lead appropriate evidence to prove the alleged selection. It is not open to this Court to go into this disputed question of fact and record a finding in this regard, in these proceedings. We however, note that the minutes of the meeting of the selection sub-committee held on 20th July, 1994, which the appellant has filed before this Court were either not filed or not proved before the Labour Court because this document is not one of the six documents which the appellant proved before the Labour Court. We, therefore, proceed on the factual position that the appellant did not select a ST candidate on 20th July, 1994, as is claimed in the appeal.

5. Section 2(oo) (bb) of the Industrial Disptues Act excludes from the scope of retrenchment, termination of the service of a workman as a result of non-renewal of the contract of employment between him and the employer on its expiry or of such contract being terminated under the stipulation made in that behalf. Therefore, the question which comes up for consideration is as to whether the services of the respondent were terminated either on account of appellant's not renewing the contract of his employment or on account of any term stipulated in the order of his

appointment. Admittedly, the employment of the respondent in terms of the order dated 2nd August, 1994 would have continued till 5.9.1994, the same being for a period of six months with effect from 6.6.1994, unless a regular ST Category candidate was to be selected in the meanwhile. Since the services of the respondents were terminated vide order dated 8.8.1994, with immediate effect, obviously this was not a case of non-renewal of the term of appointment of the respondent.

The case of the appellant si that the services of the respondent were dispensed with on account of regular selection of an ST candidate in the meeting held on 20.7.1994. The order, whereby the services of the respondent were dispensed with does not indicate that his services were being terminated on account of selection of a ST candidate to occupy the post against which he was employed. As noted earlier, the appellant did not prove, before the Labour Court, that it had selected a ST candidate on 20.7.1994. Thus, neither the order dated 8.8.1994 disclosed selection of a regular ST candidate nor was such a selection proved during the proceedings before the Labour Court. Therefore, the case of the respondent did not fall within the purview of Section 2(oo)(bb) of the Act.

6. In ***Devinder Singh* vs. *Municipal Council, Sanaur*** [(2011) 6 SCC 584, the appellant before the Supreme Court was engaged by the respondent with effect from 1.8.1994 and his services were discontinued with effect from 30.09.1996 without giving him the notice and compensation as per requirement of Section 25F of the Act. On an industrial dispute being raised by him, the respondent claimed that the appellant was engaged on contract basis and his services were terminated because the approval to the resolution for his employment was not given by the government. The Labour Court held that no evidence had been produced by the respondent to prove that it was a case of termination of service in accordance with the terms of the contract of employment. The order passed by the Labour Court for reinstatement of the appellant was set aside by the High Court. The Supreme Court noted that the appellant had been engaged initially for a period of six months on contract basis and the said engagement was renewed three times, the last engagement being on 1.5.1996 for a period of six months, but his engagement was discontinued with effect from 30.9.1996. The Court acknowledged that the engagement of the appellant was not preceded by any advertisement and consideration of the competing claim of other eligible persons. As

regards the plea of the respondent that the action taken by it was covered under Section 2(oo)(bb), the Apex Court was of the view that the same had rightly not been entertained by the Labour Court because no material was produced by the respondent to show that the engagement of the appellant was discontinued by relying upon the terms and conditions of the employment.

7. In ***Hindustan Steel Ltd. v. The Presiding Officer, Labour, Orissa and Ors.*** (1976) 4 SCC 222, the respondents before the Supreme Court were appointed initially for a period of three years each. The appellants, pursuant to a policy to "streamline the organization and to effect economies wherever possible", chose not to renew the contracts of service. No order terminating their services was passed since the appellants took the option that the termination was automatic on the expiry of the contractual period of service. On an industrial dispute being raised by the respondents, the Labour Court directed their reinstatement with back wages. The writ petition filed by the appellant having been dismissed by the High Court, the matter was taken to Supreme Court by way of an appeal. The contention of the appellants was that the services of the respondents having come to an end by efflux of time, such

termination did not fall within the definition of retrenchment in Section 2 (oo) of the Industrial Disputes Act. In the appeal filed by the management, the Supreme Court observed that the proviso to Section 2 (oo) of the Act would have been quite unnecessary if retrenchment, as defined in said provision, was intended not to include service of respondent by efflux of time in terms of an agreement between the parties.

In ***State Bank of India v. N.Sundara Money*** *(1976) 1 SCC 822***,** the Supreme Court analyzing Section 2(oo) of the Act, inter alia, held as under:-

> "Termination. For any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ?... A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term …. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced.
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> …. An employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other

ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination."

8. In the case before us, since neither the order whereby the services of the respondent were dispensed with so indicated nor was it proved before the Labour Court that the services of the respondent were discontinued on account of selection of a regular ST candidate, it cannot be said that the termination of the respondent was based upon the terms of his employment. The above referred decision of the Supreme Court, therefore, squarely applies to the facts of the case before us.

9. Since, disengagement of the respondent was not covered under Section 2(oo)(bb) of the Act, the termination of the services of the respondent being in violation of the mandatory provisions of Section 25F of the Act, was rightly quashed by the Labour Court. We find no merits in the appeal and the same is hereby dismissed. We, however, make it clear that the award of the Labour Court and the dismissal of the writ petition and the appeal would not come in the way of appellant passing fresh order terminating the services of the respondent strictly in terms of

Section 2(oo)(bb) of the Act, in case the appellant is so advised. In the facts and circumstances, there shall be no orders as to costs.

V.K.JAIN, J

CHIEF JUSTICE

JANUARY 21, 2013
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