

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

Date of Decision: 24th April, 2017

+ W.P. (C) 2103/2012

SURESH PAL

..... Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

versus

THE MANAGEMENT OF MUNICIPAL CORPORATION OF
DELHI

..... Respondent

Through: Ms. Biji Rajesh, Ms. Aditi Gupta
and Mr. Gaurang Kanth,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
O R A L

1. In the year 1995, a Reference was made by the Competent Authority to trial court regarding termination of petitioner's service as a *Beldar/Mali* on 26th November, 1990 as being illegal/unjustified and the said Reference has been answered by the trial court vide impugned Award of 21st December, 2010 holding that the petitioner/ workman has miserably failed to prove his case.

The stand of the parties is duly noticed in the impugned Award and so needs no reproduction.

2. Suffice to note that petitioner claims to have worked as *Beldar/Mali* w.e.f. 17th May, 1989 and his specific grievance has been that his juniors have been retained in service whereas his

service has been illegally terminated. The demand notice of 4th July, 1994 was sent to respondent/management but in vain. The stand of management is that petitioner/workman was engaged for a period of two months only for seasonal work and once the work was over, his service was dispensed with, and so it is not a case of illegal termination of service. Pertinently, respondent had cross-examined petitioner but had not led any evidence. Petitioner's application for direction to respondent to produce the record has been dismissed by trial court vide order of 17th September, 2010 at the stage of cross-examination of petitioner by observing that there was no need of production of documents by respondent/management and that petitioner/workman himself did not procure the original certificate or copies of the relevant documents and so the burden of proving the case cannot be shifted on respondent/management. The trial court has held that petitioner has failed to prove by documentary evidence that he had actually worked with the respondent.

3. To assail the impugned Award, learned counsel for petitioner submits that it is evident from the provisional Seniority List of Muster Roll employees [*Annexure P-8 (colly)*] that as on 12th May, 1998, one Sh. Tej Pal, s/o Shri Kashi Ram and many others who were employed subsequent to petitioner were still working continuously and this is evident from respondent's Office Orders of 29th March, 2006 and 9th January, 2007 [*Annexure P-9 (colly)*], which show that such similarly situated daily wage *Beldars* have been regularized and so denial of regularization of service of

petitioner is wholly unjustified. Petitioner's counsel submits that although petitioner had not worked for more than 240 days but still in view of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act'), the last daily wager has to go first and so termination of petitioner's service was clearly illegal. It is further submitted that as per Section 25-H of the ID Act, opportunity of re-employment ought to have been granted to petitioner which has not been done and so petitioner is entitled to reinstatement with full back wages. To submit so, reliance has been placed upon Supreme Court's decision in *BSNL v. Bhurumal*, 2013 (15) SCALE 131. Reliance is also placed upon an unreported decision of a Coordinate Bench of this Court in W.P.(C) 6024/1999 rendered on 25th August, 2011 in *The Management of Municipal Corporation of Delhi v. Presiding Officer, Industrial Tribunal and Anr.* to submit that where daily wager employees have been subsequently regularized, their reinstatement with back wages was ordered. Reliance is also placed by petitioner's counsel upon Supreme Court's decision in *Jasmer Singh v. State of Haryana and Another* reported as (2015) 4 SCC 458 to submit that once the termination is held to be illegal then the workman is entitled to reinstatement with back wages and also to submit that where, the Labour Court was approached after three years, it was not held to be barred by time as there is no period of limitation prescribed and the reinstatement with continuity of service and back wages was ordered.

4. On the other hand, learned counsel for respondent supports

the impugned Award and submits that there is no infirmity in it and points out that there was delay of more than four years and so it justifies the denial of reinstatement with back wages. Reliance is placed upon Supreme Court's decision in *Range Forest Officer v. S.T. Hadimani*, (2002) 3 SCC 25 to submit that mere affidavit by the workman is not sufficient and evidence has to be led and petitioner herein has failed to lead evidence and so his claim petition has rightly been dismissed by the trial court.

5. In rebuttal, petitioner's counsel has placed reliance on Supreme Court's decision in *Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda*, (2010) 1 SCC 47 to submit that judicial notice has to be taken of the fact that a workman has difficulty in access to the records like Muster Roll etc. in connection with his service and so the burden of proof shifts to the employer to prove that the worker had not completed 240 days of service. Nothing else is urged on behalf of the parties.
6. Upon hearing and on perusal of impugned award, evidence on record and the decisions cited, I find that petitioner had not worked for requisite 240 days and so, he is not entitled to relief under Section 25-F of the ID Act. As far as, petitioner's claim for relief under Sections 25-G and 25-H of the ID Act are concerned, I find that the foundation for it has not been laid by petitioner's counsel. In the pleadings, it has not been specifically averred by petitioner that no notice of re-employment was received by him. Similarly, it has not been averred that as to who was the last person, who was employed after petitioner and has been retained

by respondent/management and so in the absence of such essential pleadings, the relief under the provisions of Sections 25-G and 25-H of the ID Act cannot be granted and learned Tribunal has not erred in denying the relief to petitioner under these provisions.

7. Reliance placed by petitioner's counsel upon decision in *The Management of Municipal Corporation of Delhi (supra)* is of no avail to petitioner's case, for the reason that the list of employees was not produced in the said case whereas, it is been produced by respondent in the instant case. Supreme Court's decision in *Jasmer (supra)* is of no assistance to the case of petitioner because violation of Sections 25-G and 25-H of the ID Act is not proved in the instant case. Since petitioner had not worked for more than 240 days, therefore, he is not entitled to relief under Sections 25-F of the ID Act. Since, there is no basis to hold that the principle of '*last come first go*' has not been followed, therefore, reliance placed by petitioner's counsel upon Supreme Court's decision in *Bhurumal (supra)* is of no assistance to him. It is true that Supreme Court in *Bhikubhai Meghajibhai Chavda (supra)* has reiterated that the management has to produce the relevant records but in this case, the records were sought by petitioner after more than two decades. Non production of relevant records by respondent/management after two decades is fully justified as the record regarding Muster Roll in the year 1990 etc would not have been available with the respondent.

8. In the ultimate analysis, this court is of the considered view that impugned award does not suffer from any serious error of fact

and law and so this petition deserves to be dismissed.

9. Consequently, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
Judge

APRIL 24, 2017

j

