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

\+ W.P.(C) No. 3642/2015

Judgment reserved on : 19th July, 2017

Date of decision : 7th August, 2018

RADHA ..... Petitioner

Through: Mr. Anuj Aggarwal and Mr.Ashutosh Dixit, Advocates

Versus

FOOD AND CIVIL SUPPLIES DEPARTMENT .. Respondent

Through: Mr.Imran Majid with Mr.Arun Sharma, Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Smt. Radha Devi vide the present petition seeks the setting aside of the impugned award dated 5.3.2015 of the Presiding Officer Labour Court-XVII, Karkardooma, Delhi in DID No.56/10, Unique ID No.02402C0149092010 vide which whilst holding that the respondent had not been able to prove that the petitioner's services with the respondent, i.e., the Food & Civil Supplies Department, which were availed of by the respondent were on contractual basis for a limited period and that the respondent fell within the ambit of 'Industry' in terms of Section 2(j) of the Industrial Disputes Act, 1947 and implicitly thus held that the termination of services of the petitioner on 31.12.2009 by the respondent were illegal, however did not grant reinstatement with full back wages and in lieu of the same granted a lumpsum compensation of Rs.60,000/-

with directions to the Management, i.e., the respondent herein to pay the said amount to the work-woman within a month from the date of publication of the award dated 5.3.2015 failing which the petitioner would be liable to be paid interest @ 12% per annum from the date of the award, i.e., 5.3.2015, till realization, and the petitioner thus seeks that the relief of reinstatement, continuity of service and full back wages be granted to her apart from the costs of the petition.

2. Notice of the petition was issued to the respondent who put in appearance and the counter affidavit and the written statement on behalf of the respondent were submitted. During the pendency of the present petition vide order dated 7.9.2016, the respondent was directed to pay to the petitioner, the amount of Rs.60,000/- as awarded by the impugned award without prejudice to her rights and contentions which amount of Rs.60,000/- has been released for payment through the RTGS mode into the account of the petitioner at the Syndicate Bank, Delhi on 28.9.2016.

3. Submissions were made on behalf of either side.

4. As per the record, as indicated vide the impugned award, on 1.7.2007, the petitioner was appointed as a Safai Karamchari (full day worker) by the State Commissioner, Vikas Bhawan, New Delhi vide order No. F.1(569)/Admn./SC/2007 dated 30.10.2007, 23.7.2008 and 4.9.2008 and her services were confirmed a number of times by the Head of the Department, Secretary –cum-Commissioner (Food Supply and Consumer Affairs Department) (P-4/C) as per provisions vide Finance General Deptt. Circular No.F-13/Fin./G/2003-2004/1035-1285 dated 9.10.2003 having been determined dated 9.10.2003 and

had been appointed on 1.7.2007 and her services continued till 31.12.2009 when her services were terminated without giving her any notice and retrenchment compensation, and she thus issued a legal notice dated 22.1.2010 through counsel and sought reinstatement with full backwages and continuity of service.

5. The management contended before the learned Presiding Officer Labour Court, Karkardooma, that it was not an industry and that the work-woman had been appointed as a part-time Safai Karamchari w.e.f. 1.7.2007 but subsequently in view of the requirement, was taken a full time worker purely on a contractual basis initially for a period of three months on daily wages which came to an end finally on 31.12.2009.

6. During the course of proceedings before the learned Presiding Officer Labour Court the following issues were framed on 11.3.2011 which are to the effect

i) Whether the workman was employed on contractual basis? OPM

ii) Whether the management is an 'industry' as defined u/s 2(i) of the Industrial Disputes Act? OPW

iii) Relief.

7. On 23.12.2012 none having represented the management, i.e., the respondent to the present petition, it was thus proceeded *ex parte* and on the said date the work-woman was also examined as WW-1/1 and tendered in evidence her affidavit EX.WW-1/A and relied upon the legal notice dated 22.1.2010 Ex.WW -1/1 *inter alia.* Ex.WW-1/5 placed on the record was the order dated 4.9.2008 vide which the

work-woman described as part-time worker was engaged as a Safai Karamchari to work full day in the State Commission w.e.f. 1.7.2008.

8. The management had claimed in its written statement that the work woman was engaged initially as a part-time Safai Karamchari w.e.f.1.7.2007 and after some time was taken as a full-time Safai Karamchari on contractual basis and her contract of employment was extended several times but only for three months each time and came to an end finally on 31.12.2009. The management chose not to lead any effective evidence by way of examination of any witness qua both the issues No. 1 and 2 framed on 11.03.2011.

9. Through the present petition, it is submitted that in view of the verdict of the Hon'ble Supreme Court in ***Jasmer Singh Vs. State of Haryana***; 2015(1) SCALE 360 for the illegal termination of her services she is entitled to the relief of reinstatement, continuity of service, and full back wages in as much as the termination of her services was in violation of Section 25 of the Industrial Disputes Act, 1947 and thus she claimed she was entitled to all consequential benefits which include reinstatement, continuity of service with full back wages. The petitioner also placed reliance on the verdict of the Hon'ble Supreme Court in ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (Haryana;*** [(2010) 5 SCC 497] to similar effect.

10. The petitioner has further submitted that the law through the Industrial Disputes Act makes no distinction between a daily wager and a regular employee as laid down by the Hon'ble Division Bench of this Court in ***Delhi Contonment Board Vs. Central Government***

Industrial Tribunal & Ors.;, 129 (2006) DLT 610. The petitioner submits that she is unemployed since the date of her illegal termination of her service and despite her best efforts she was not able to procure any employment anywhere and thus was entitled to reinstatement and continuity of service with full back wages in as much as the termination of her services was in violation of Section 25(G) and 25(H) of the Industrial Disputes Act, 1947.

11. It was contended on behalf of the petitioner, whilst placing reliance on the verdict of this Court in ***Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Ors. 129 (2006) DLT 610,*** that as held therein the principle of service law cannot be automatically applied into industrial law and that whereas in service law a permanent employee has a right to the post where a temporary employee does not, under the Industrial Disputes Act, 1947, there is no distinction between the permanent employee and temporary employee (whether a probationer, casual, daily wage or adhoc employee) and it was thus contended that as a consequence thereof, the petitioner whose services have been held by the Labour Court to have been illegally terminated, the petitioner / the workman is entitled to all benefits under the Industrial Disputes Act, 1947 in as much as the petitioner had admittedly put in over 240 days of service and the conditions of Section 25F of the Industrial Disputes Act, 1947 preceding determination of the services had not been complied with. The observation of this Court in ***Delhi Cantonment Board*** (supra) reads to the effect :-

"4. Learned counsel for the appellant submitted that the respondents were on probation and hence their services could be terminated without enquiry. In our opinion, the basic flaw in this argument is that it relies on a principle of service law, whereas we are concerned with industrial law. The principle of one branch of law cannot be automatically applied in another branch.

5. In service law there is an important difference between a temporary employee and a permanent employee. A permanent employee has a right to the post whereas a temporary employee does not, vide State of U.P. v. Kaushal Kishore Shukla . However, there is no such distinction in industrial law. It may be noted that the Industrial Disputes Act makes no distinction between a permanent employee and a temporary employee (whether a probationer, casual, daily wage or adhoc employee).

6. The definition of 'workman' in Section 2 of the Industrial Disputes Act states that a workman means :-

any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i)who is subject to the Air Force Act, 1950 (45) of 1950), or the Army employee of a person, or

(ii)who is employed in the police service or as an officer or other employee of a person, or

(iii)who is employed mainly in a managerial or administrative capacity, or

(iv)who being employed in a supervisory capacity, draws wages exceedings one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

7. A perusal of the above definition shows that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act.

8. Thus, it has been held in Chief Engineer (Irrigation) Chepauk, Madras v. N.Natesan (1973) II LLJ 446 (447) (Mad.) and in Management of Crompton Engineering Co.(Madras) Private Ltd. v. Presiding Officer, Additional Labour Court (1974) I LLJ 459 (Mad.) that even a temporary employee falls within the definition of workman. Similarly in Elumalai v. Management of Simplex Concrete Piles (India) Ltd. (1970) II LLJ 454 and Tapan Kumar Jena v. General Manager, Calcutta Telephones (1981) Lab.I.C. (NOC) 68 (Cal.) it was held that a casual employee is also a workman. In other words, every person employed in an industry, irrespective of whether he is temporary, permanent or a probationer is a workman vide Hutchiah v. Karnataka State Road Transport Corporation (1983) I LLJ 30(37) (Kant.), provided he is doing the kind of work mentioned in Section 2(s).

9. Since the respondents were workmen under the Industrial Disputes Act, Section 25F of the Act had to be complied with if they had put in 240 days of service in the year prior to the date of termination of service.

> ***Respondents had admittedly put in over 240 days of service. Hence the termination of their service was illegal, since compliance of Section 25F is a condition precedent to the termination of service vide State of Bombay v. Hospital Mazdur Sabha 1960 I LLJ 251 SC, National Iron & Steel Co.Ltd. v. State of West Bengal 1967 II LLJ 23 SC, Mohanlal v. Management of Bharat Electronics Ltd. 1981 LIC 806 (815) SC, Avon Services (Production Agencies) Ltd. v. Industrial Tribunal 1979 I LLJ I SC. etc.***"

12. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Boards, Rohtak (Haryana);*** (2010) 3 SCC 637**,** to contend that the POLC-XVII, KKD, Delhi having held the termination of the services of the petitioner to be illegal, she ought to have been directed to be reinstated with full back wages in as much as there was nothing on record established by the respondent to the effect that the petitioner was in any gainful employment after termination of services till date.

13. Reliance was placed on behalf of the petitioner on the verdict of Hon'ble Supreme Court in ***Jasmer Singh Vs. State of Haryana 2015II AD (S.C.) 215*** to contend that the reinstatement in the job with continuity of services of full back wages ought to have been granted to the petitioner by the POLC-XVII, KKD, Delhi when termination of her services had been held to be illegal.

14. Reliance was also placed on behalf of the petitioner on the observations of the Hon'ble Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors. (2013) 10 SCC 324*** wherein it was observed to the effect that : -

> ***"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."***

15. Reliance was also placed on behalf of the petitioner on the verdict of this Court in ***The Management of Municipal Corporation***

of Delhi Vs. Presiding Officer, Industrial Tribunal and Anr. W.P. © 6024/19999 dated 25.08.2011 to contend that reinstatement ought to have been granted to the petitioner herein in as much as the work done by her as a safai karamchari was similar in nature of work to those performed by others in regular service.

16. Reliance was also placed on behalf of the petitioner on the verdict of Hon'ble Single Bench Judge of this Court in ***Management of Garrison Engineer Vs. Bachhu Singh*** reported in ***2010 (115) DRJ 576*** in which it was observed to the effect that the workman was entitled to compensation in lieu of reinstatement and the Labour Court during the course of hearing had inquired the age of the respondent / workman and it was ascertained that he still had about 10 years of service left and the compensation amount of Rs.75,000/- only given was enhanced to Rs.4 lakhs. This judgment was assailed by the workman vide LPA No. 340/10 whereby the Hon'ble Division Bench of this Court vide verdict dated 02.12.2010 enhanced the compensation from Rs.4 lakhs to Rs.6 lakhs and it was thus reiterated on behalf of the petitioner that the amount of lump sum compensation even if so awarded ought to be enhanced.

17. The respondent through its counter affidavit contended that there was no relationship of workman and employer between the petitioner and the respondent and thus no relief can be granted to her as the petitioner was not a *'workman'* in terms of Section 2(s) of the Industrial Disputes Act, 1947, and that the respondent was not an *'industry'* as per Section 2(j) of the Industrial Disputes Act, 1947 is a government department and thus the petition is not maintainable.

18. *Inter alia*, the respondent whilst placing reliance on the verdict of this Court in ***Keshav Dutt & Others vs. Delhi Tourism and Transport;*** 2015 (150) DRJ 406 in which reference was made to the verdict of the Hon'ble Supreme Court in ***Secretary, State of Karnataka v. Uma Devi*** : 2006 (4) SCC 1, contended that persons who have been appointed pursuant to an advertisement which itself required employment only for a limited period cannot seek regularization and that the present petitioner having been engaged as a part time Safai Karamchari initially w.e.f. 1.7.2007 and subsequently in view of requirement was engaged as a Safai Karamchari to work for full day in the State Commission w.e.f. 1.7.2008 and was thereafter so further engaged to work for full day w.e.f. 1.7.2009 to 30.9.2009 and w.e.f. 1.10.2009 to 31.12.2009, and thereafter the services of the petitioner had been terminated and the service of the petitioner cannot be termed to be illegally terminated nor could the petitioner seek the relief of reinstatement, continuity of service, nor full back wages, as sought by her.

19. Through the written submissions of the respondent it was reiterated that the petitioner had been engaged only on contractual basis as a part time Safai Karamchari w.e.f. 1.7.2007 and thereafter was taken as a full time worker to work purely on contractual basis for a period of three months initially on daily wage basis and the contractual employment was renewed from time to time for three months each time which came to an end finally on 31.12.2009 and that after the completion of the contractual period, the services of the petitioner were dispensed with and in terms of the decision taken by

the Commissioner (Food and Supplies) the contract of "Safai" in the office of the commission was outsourced.

20. The respondent further contended that there was no illegality whatsoever in discontinuation of the service of the petitioner after completion of the contract period and that the petitioner did not get any right for reinstatement or any commission. *Inter alia*, the respondent contended that it was a *quasi-judicial* body set up under the Consumer Protection Act, 1986 and did not fall within the ambit of an '*Industry*' under Section 2(j) of the Industrial Disputes Act, 1947.

21. The respondent further contended that the petitioner was only a workwoman working on the basis of daily wages (i.e. temporary daily wager) and thereafter on contractual employment and that the petitioner had not undergone the process of selection before she was appointed as a daily wager and in terms of the verdict of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. (2006) 4 SCC 1,*** vacancies cannot be filled without regular recruitment process and observing that a person cannot be appointed on such a post without following a regular recruitment process. Reliance was thus placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. 2006 (4) SCC 1, Official Liquidator Vs. Dayanand and Others (2008) 10 SCC 1, National Fertilizers Ltd. and Others Vs. somvir Singh (2006) 5 SCC 493, Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another (2007) 5 SCC 326 and State of***

Orissa and Another Vs. mamata Mohanty (2011) 3 SCC to similar effect.

22. Reliance was also placed on behalf of the petitioner on the verdict of Hon'ble Supreme Court in ***Kumar Mayank Vs. Delhi Technological University and Another 2016 X AD (Delhi) 547*** wherein vide para 2 thereof, it was observed to the effect : -

> ***"2. It is now over 10 years since the of passing of the judgment by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others 2006 (4) SCC 1 and which judgment effectively puts to an end the "industry" created of temporary appointments and thereafter regularization of such temporary employees. The Supreme Court has made it abundantly clear in Umadevi's case (supra) that before appointing of persons on a regular/permanent basis there have to exist recruitment rules or specific eligibility criteria laid down for the appointments, there must be sanctioned posts, there must be vacancies in the sanctioned posts, and finally there must be issued advertisements for filling the posts; not as temporary or contractual posts but as permanent posts; so that there should be a level playing field of competition with respect to prospective appointees. Candidates can also be called from the lists of employment exchanges. Umadevi's case (supra) has laid down the following ratio:-***
>
> ***"(I) The questions to be asked before regularization are:-***
>
> ***(a)(i)Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of***

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter. (II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization. (IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process. (V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue

employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure. (VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII)The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution."

23. Reliance was also placed on behalf of the respondent on the verdict of Hon'ble Supreme Court in ***BSNL Vs. Bhurumal,2013 (15) SCALE-131*** wherein it was observed to the effect : -

"In Jagbir Singh v. Haryana State Agriculture Mktg..Board[3], delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, U.P.State Brassware Corpn. Ltd. V. Uday Narain Pandey[4], Uttaranchal Forest Development Corpn. V. M.C. Joshi[5], State of M.P. v. Lalit Kumar Verma[6], M.P.Admn v.Tribhuban[7], Sita Ram v.Moti Lal Nehru Farmers Training Institute[8], Jaipur Development Authority v. Ramsahai[9], GDA v. Ashok Kumar[10] and Mahboob Deepak v.Nagar Panchyat, Gajraula[11] and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14) "It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that

> ***relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice",***

to contend that even if the services of the petitioner were held to be rightly illegally terminated, as held by the POLC-XVII, KKD, Delhi, the relief by way of reinstatement with back wages ought not to have been automatic and could thus be automatic.

24. *Inter alia* reliance was placed on behalf of the respondent on the verdict of this Court in ***Baldev Singh Vs. The President M/s. Archana Cinema in W.P. (C) 6311/2010*** decided on 27.04.2017 and the verdict of this Court in ***NDMC Vs. HARISH KUMAR in W.P. (C) 7102/2012 decided on 18.04.2017*** to contend that the reinstatement in the instant case was rightly not granted by the POLC-XVII, KKD, Delhi and that the compensation awarded also of Rs.60,000/- was not inadequate in the circumstances of the case.

25. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Assistant Engineer, Rajasthan Development Corp., and Anr. Vs. Gitam Singh (2013) 5 SCC 136*** to contend that a distinction has to be drawn between daily rated workers and workers holding regular posts and in such circumstances, reinstatement and full back wages ought not to be granted to the daily rated workers and thus had rightly not been so granted by the Labour Court and specific reliance was placed on

behalf of the petitioner on the observations in para 22 of the said verdict

26. Reliance was also placed on behalf of the respondent on the verdict of this Court in ***Union of India through Secretary Vs. Shri Anil Kumar & Ors. decided on 18.05.2015*** and ***Union of India through Secretary Ministry of Defence Vs. Ram Kumar and others in W.P.(C) 16715/2016 and W.P.(C) 16718/2016 respectively,*** a specific reference to paras 36 to 39 thereof to contend that reinstatement as sought by the petitioner with full back wages cannot be granted in as much as the order of the reinstatement would amount to giving an employment to the petitioner whose appointment was admitted not as per rules and that the grant of compensation would suffice to meet the ends of the justice of the employee and his family.

27. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble High Court of Karnataka Dharwad Bench in ***Sri Mehaboobsab Mulla (Radio) Vs. Gulbarga Electricity Supply Company Ltd. Decided on 31.05.2017 in W.P. Nos. 100664/2015 & 100225/2016*** to contend that the compensation granted vide the impugned award to the tune of Rs.60,000/- to the petitioner herein was adequate and ought not to be enhanced.

28. *Inter alia,* it was submitted on behalf of the respondent that on the verdicts relied upon on behalf of the petitioner in ***Jasmer Singh Vs. State of Haryana***; 2015(1) SCALE 360 and ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors. (2013) 10 SCC 324*** had not taken into account the verdict of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and Ors.***

Vs. Umadevi and Ors. 2006 (4) SCC 1, Official Liquidator Vs. Dayanand and Others (2008) 10 SCC 1, National Fertilizers Ltd. and Others Vs. somvir Singh (2006) 5 SCC 493, Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another (2007) 5 SCC 326 and State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC and the respondent thus prayed that the writ petition be dismissed with costs.

29. On a consideration of the entire available record and rival submissions on behalf of the either side, it is apparent that the petitioner was appointed as a safai karamchari worker / initially part time by the State Commission, Vikas Bhawan, New Delhi w.e.f. 01.07.2007 vide order dated 01.07.2008 to work as a safai karamchari full day w.e.f. 01.07.2008 and was further engaged to work for full day w.e.f. 01.07.2009 to 30.09.2009 (3 months) and w.e.f. 01.10.2009 to 31.12.2009 (3 months) and in view of the verdict of learned Division Bench of this Court in ***Delhi Contonment Board Vs. Central government Industrial Tribunal & Ors.;***, 129 (2006) DLT 610 and the verdict of ***Jasmer Singh Vs. State of Haryana***; 2015(1) SCALE 360, it is apparent that the contention of the petitioner that termination of the services of the petitioner without requisite compliance of Section 25F of the Industrial Disputes Act, 1947 was erroneous, is not devoid of merits.

30. However as rightly observed by the POLC-XVII, KKD, Delhi vide the impugned award dated 05.03.2015 Ex.WW1/15 relied upon by the workwoman herself showed that she had been employed as daily wager and had worked during the period 01.07.2007 and had

worked for two years and six months and was thus not entitled for reinstatement and full back wages in as much as even in cases of illegal termination of service, reinstatement cannot be held to be automatic. Reliance was placed in the impugned award to the verdict of this Court in ***Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 Iv AD (Delhi) 709*** whereby it was observed in paras 27 & 28 thereof to the effect : -

> ***"27. We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.***
>
> ***28. Considering the facts of the case, we are persuaded to award compensation in lieu of reinstatement and back wages to the workman."***

31. The verdict of this Court in ***Vinod Kumar & others Vs. Salwan Public School & others WP(c) 5820/2011 dated 17.11.2014*** wherein observes to the effect that : -

> ***"11. Having considered the rival submissions of the counsels for the parties, I do not find any infirmity in the order of the Labour Court. It is a settled position of law that even if termination has been held to be illegal, reinstatement with full back wages is not to be granted***

automatically. The Labour Court is within its right to mould the relief by granting a lump-sum compensation. In fact, I note that the Labour Court has relied upon three judgments propounding the law that the Labour Court can mould a relief by granting lump sum compensation; the Labour Court is entitled to grant relief having regard to facts and circumstances of each case.

12. Further, the Supreme Court in the following judgments held as under:

(a) In the matter reported as Jaipur Development Authority v. Ramsahai, (2006) 11 SCC 684, the court has stated:

"However, even assuming that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs 75,000 is awarded to the respondent by way of

compensation as has been done by this Court in a number of its judgments."

(b) In the matter reported as Nagar Mahapalika v. State of U.P., (2006) 5 SCC 127, the court has stated:

"23. Non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

25 .....The appellant herein has clearly stated that the appointments of the respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of the Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefor having come to an end. It, therefore, in our considered view, is not a case where the relief of reinstatement should have been granted."

(c) In the matter reported as Talwara Coop. Credit and Service Society Ltd. v. Sushil Kumar, (2008) 9 SCC 486, the court has stated:

"8. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The IndusLabour Courts while exercising their power under Section 11-Aof the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment viz. whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration."

(d) In the matter reported as Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, the court has stated:

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. ...

14. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically

passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

32. The verdict of Hon'ble Supreme Court in ***Municipal Counsel Sujanpur Vs. Surinder Kumar 2006 LLR 62*** observes to the effect that relief of reinstatement is not automatic but it was for the Labour Court to consider the facts of each case to ascertain the relief that can be granted in terms of Section 11A of the Industrial Disputes Act, 1947.

33. Vide the impugned award, reliance was also placed on the verdict of Hon'ble Supreme Court in ***Haryana Urban Development Authority Vs. Om Pal (2007) 5 SCC 742*** is also to the effect that the relief of reinstatement with full back wages should not be granted automatically only because it was lawful to do so and that the grant of relief would depend on the fact situation of each case and would depend upon several factors, one of which was as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

34. The impugned award also places reliance on the verdict of the Hon'ble Supreme Court in ***Talwana Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 486*** wherein it was laid down by the Hon'ble Supreme Court that the grant of relief of

reinstatement was not automatic and that for the said purposes certain relevant factors as for example nature of service, the mode and manner of recruitment i.e. whether the appointment had been made in accordance with the statutory rules so far as a public service undertaking was concerned, had to be taken into consideration.

35. Reliance was also placed vide impugned award on the verdict relied upon on behalf of the respondent herein of the Hon'ble Supreme Court in ***Asstt. Engineer Rajasthan Development Corporation and Anr. Vs. Gitam Singh (2013), SCC 136*** to the effect that a distinction has to be drawn between a daily wager and a regular employee's post for the purposes of a consequential relief and that where the length of engagement as a daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid.

CONCLUSION

36. Taking the totality of the facts and circumstances of the instant case into account which indicates that the petitioner was a daily wager FROM 01.07.2007 to 31.12.2007 and that she had not been recruited for regular appointment, nor had she been appointed as a regular employee on the basis of any regular employment, the POLC-XVII, KKD, Delhi vide the impugned Award dated 05.03.2015 in DID No. 56/10 had rightly not granted the relief of reinstatement and full back wages.

37. In the facts and circumstances of the case, however, taking into account the factum that the petitioner workwoman had worked for the period from 2007 till 2009 i.e. for a period of two years and six

months, the compensation awarded of Rs.60,000/- undoubtedly is meager and it is considered appropriate to enhance the payment of the said amount to a total compensation of a sum of Rs.2 lakhs and the sum of Rs.60,000/- as awarded vide the impugned award dated 05.03.2015 which has already been released to the petitioner by the respondent is directed to be deducted from this compensation amount of Rs.2 lakhs and thus the balance sum of Rs.1,40,000/- is directed to be paid by the respondent to the petitioner within a period of one month from today failing which the respondent would be liable additionally to pay interest @Rs.12% per annum on the amount of Rs.1,40,000/- w.e.f. today till realization.

38. Furthermore, the respondent having deposited the amount of Rs.60,000/- only on 28.09.2016 into the account of the petitioner, is also liable to pay interest @12% per annum from the date of the said amount awarded vide the award dated 05.03.2015 in DID No. 56/10 till the date 28.09.2016, which is also directed to be paid within a period of one month w.e.f. today.

39. The petition is disposed of accordingly.

ANU MALHOTRA, J.

AUGUST 7th, 2018
SV/MK