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

% *Decided on: 28.02.2020*

\+ W.P.(C) 4749/2007

EXECUTIVE ENGINEER DIVISION CPWD ..... Petitioner
Through: Mr. Anil Panwar, Adv. with
Mr. Tanishq Panwar, Adv.

versus

BIJENDER & ANR. ..... Respondents
Through: Mr. Anuj Aggarwal, Adv. with
Mr. Tenzing Thinlay Lepcha, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the award dated 31.01.2007 passed by Central Government Industrial Tribunal cum Labour Court No.1. The workmen were supposed to reinstate with 40% back wages. The petitioner has crystallized the issue to be determined in this case in the rejoinder as under:-

> *"1. That the short question of law involved in the present petition is whether the 1st respondent working as a contractor for supply of labour (sewerman) when opts to perform the contract by working himself as a sewerman can be said to be a contractual workman. That the judgment of this Hon'ble Court in case of PWD vs. Satya Pal [132 (2006) DLT 571 (DB)] holding such contractor as a workman has been stayed by the*

Hon'ble Supreme Court in CC No. 2082/2007 vide order dated 8-03-2007 annexed as Annexure: P-10 to the petition paper book and the matter is pending decision by the Hon'ble Supreme Court. Hence, this Hon'ble Court may be pleaed to adjourn the matter sin-die till the final decision by the Hon'ble Supreme Court."

2. The Division Bench of this Court has held that the work order employees, daily wagers and direct employees would get benefit of regularisation of the principal employer i.e. the petitioner. The aforesaid SLP preferred by the petitioner was dismissed by the Supreme Court on 10.11.2009 by the following order:-

"Having heard Mrs. Indira Jai Singh, learned Additional Solicitor General, appearing for the petitioner and Mr. Varun Prasad, learned counsel appearing for the respondent-employee and after going through the impugned orders, we find that the three courts below concurrently found on fact that the respondent having completed 240 days is entitled for reinstatement. That being the position and nothing adverse could be shown from the orders of lthe High Court, we are not inclined to interfere with the impugned order, exercising our discretionary power under Article 136 of the Constitution and this special leave petition accordingly stands dismissed.

3. Since the issue has already been found in favour of the respondent-workmen, the sole ground for the petitioner to challenge of the impugned order is dissipates.

4. The facts of the present case are stated to be identical to the facts in *Satya Pal* (*supra*) in which the Division Bench of this Court held as under:

*"**9.** It is apparent from the above that the device of issuing work orders was to satisfy the letter of the law as contained in Section 2(oo)(bb) but in was in fact it was nothing but an employment on the continuous basis. The very purpose for which Section 2(oo)(bb) was introduced was to avoid saddling an employer with the liability under Section 25F where a worker had been engaged for a very short period of say, two or three months. It was not meant to be invoked in a situation where the worker is in continuous employment, as in this case, for over three years. If one were to interpret Sections 2(oo)(bb) in the manner that the appellant suggests, it would permit the law to be misused to avoid a statutory liability. It must be kept in mind that the ID Act is intended to protect a workman whose services have been continuously engaged for a considerable period of time. It is in this background that the provision of Section 2(oo)(bb) should be interpreted.*

***13.** It is thus contended by the learned Counsel for the appellant that the Tribunal was not justified in awarding back wages to the extent of 40%. In support of this submission, reliance is placed again on the judgment of the Hon'ble Supreme Court in Rudhan Singh's case (supra) and of this Court in Management of Asiatic Air Conditioning & Refrigeration Pvt. Ltd. v. Presiding Officer, Labour Court-X and Anr. 114 (2004) DLT 358. As far as the Rudhan Singh's case (supra) is concerned, as already noticed, the worker there had worked for less than a year and that too in broken periods, and in those circumstances it was held that the worker would not be entitled to any back wages. As far as the judgment of this Court in the Management of Asiatic Air Conditioning & Refrigeration Pvt. Ltd's case (supra) is concerned, the decision not to award back wages turned on the fact that the organization was not so large that it could absorb the cost of paying the worker 15 years' back wages without having taken*

any work from him. It was nobody's case that the appellant herein is not a large organization and cannot absorb the liability of having to pay the respondent his back wages to the extent of 40% as awarded by the Tribunal.

14. *Finally it is submitted that the proceedings were pending before the Tribunal since 1994 for over ten years and that the appellant should not be saddled with the liability for this period when the respondent was out of service. We are unable to accept this submission. The respondent equally cannot be expected to be made to suffer for the delay in the disposal of his claim by the Tribunal which is on account of a systemic failure, not attributable to the respondent. It is not the appellant's case that the respondent caused the delay in the disposal of the case by the Tribunal. We do not find any infirmity in the award by the Tribunal of the 40% back wages upon reinstatement of the respondent."*

5. In view of the above, *Satya Pal* (*supra*) and Bijender being identically placed, Bijender too would get the same benefit. There is no reason to interfere with the impugned order.

6. The petition is without merit and the same is hereby dismissed.

NAJMI WAZIRI, J

FEBRUARY 28, 2020
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