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

% **Date of order: 31st May, 2024**

\+ W.P.(C) 12253/2009

MOHKAM SINGH ..... Petitioner
Through: Mr. Jawahar Raja, Ms. Meghna De, Ms. L.Gangmei and Ms. Surbhi Bagra, Advocates

versus

DELHI JAL BOARD ..... Respondents
Through: Ms. Kanika Agnihotri, ASC for DJB with Mr. Sachin Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

> *"a) issue a writ of certiorari or any other writ, order or direction calling for the record of LD. No.60 of 2006 from the Industrial Tribunal No. I and set-aside the Impugned Award dated 19.9.2008;*
> *b) issue a writ of mandamus or any other writ, order or direction in the nature of mandamus, commanding the Respondent to regularize the services of the Petitioner in accordance with the phased policy after taking into account his initial date of joining;*

c) pass any such order or further orders as this Hon'ble Court may deem just and fair in the facts of the case, in the interest of justice; and
d) allow the present writ petition with costs in favour of the Petitioner/workman."

2. The petitioner is a daily wage employee of the respondent engaged as a *Beldar* on 8th May, 1982 and was allegedly illegally terminated on 9th January, 1993.

3. Thereafter, the petitioner raised an industrial dispute and the same was referred to the learned Labour Court. Pursuant to completion of proceedings, an award dated 3rd January, 2002 was passed by the learned Labour Court, whereby, it was held that the termination of the petitioner was illegal and directed reinstatement alongwith back wages w.e.f. 17th July, 1996.

4. It is alleged that despite the reinstatement, the respondent failed to regularise the services of the petitioner. Therefore, the union of the petitioner served a legal demand notice dated 5th March, 2005, however, the respondent did not reply to the same.

5. Aggrieved by the same, a statement of claim dated 7th April, 2005, was filed by the Union before the Conciliation Officer. It is alleged that the respondent did not file a written statement despite numerous reminders.

6. Pursuant to failure of the conciliation, the industrial dispute in respect of non-regularisation of services of the petitioner was referred for adjudication *vide* reference dated 8th December, 2006.

7. The issues before the learned Industrial Tribunal were as follows:

"1) Whether there exists relationship of employer and employee between the claimant and the management ?
2) As per the terms of reference ?"

8. After completion of the proceedings, the learned Industrial Tribunal passed an award dated 3rd January, 2002, whereby, it was held that there has been a break in service as a daily wager muster roll employee before his reinstatement on 17th July, 1996 and therefore, the said period cannot be taken into consideration for the purpose of regularisation.

9. Aggrieved by the same, the petitioner workman has filed the instant petition.

10. The learned counsel appearing on behalf of the petitioner submitted that the impugned award is arbitrary, illegal, discriminatory and violative of Articles 14, 16, 19 and 21 of the Constitution of India and suffers from an error of law, and therefore is liable to be set aside.

11. It is submitted that the learned Adjudicator failed to appreciate that the petitioner was granted reinstatement along with 50% back wages which implies that he is deemed to be employed from his initial date of appointment which is 8th May, 1982 and his seniority has to be counted from the aforementioned date.

12. It is submitted that the learned Industrial Adjudicator has erred in not directing the respondent to regularise the petitioner from the initial date of appointment or from 1st April, 1990 as per the respondent's policy since the respondent has failed to refute that there has been a break in service of the

petitioner and the period of service before his reinstatement i.e., 17th July, 1996.

13. It is submitted that the learned Industrial Adjudicator has failed to appreciate that the respondent has reinstated the petitioner and has framed a policy for regularisation of the services of daily wage muster roll employees.

14. It is submitted that when the termination was held to be unlawful, he is entitled to all his claims connected with his employment including continuity of service from 8th May, 1982 and his involuntary and forced unemployment would form part of the period of his continuous service.

15. It is further submitted that the learned Industrial Adjudicator has failed to appreciate the decision of the Hon'ble Supreme Court in ***Gurpreet Singh vs. State of Punjab &Ors.*** **(2002) 9 SCC 492** which stated that:

> *"3. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order"*

16. It is further submitted that the learned Industrial Adjudicator has failed to appreciate that the respondent has indulged in hostile discrimination against the petitioner as the other similarly placed employees were regularised w.e.f. 1st April, 1990.

17. Therefore, in light of the foregoing submissions, it is prayed that the present petition may be allowed and relief be granted, as prayed.

18. *Per contra,* the learned counsel appearing for the respondent vehemently opposed the present petition submitting to the effect that the petitioner was engaged as a *Beldar* on daily wages muster roll in the exigency for specific work.

19. It is submitted that the petitioner has not been working continuously with the respondent and therefore, he cannot be equated with employees who have been appointed against regular sanctioned post after undergoing the selection procedure as prescribed by notified recruitment rules.

20. It is submitted that the petitioner worked from 8th May, 1982 to 9th January, 1993 and thereafter, abandoned his employment and subsequently, in November 1993, the petitioner approached the management for fresh employment.

21. It is submitted that it is denied that he is entitled to be treated as a regular and permanent employee from the initial date of his joining. It is further submitted that the management has framed a policy for regularisation of the services of the daily wage muster roll subject to availability of the posts.

22. Hence, in view of the forgoing discussion, it is submitted on behalf of the respondent that the petition is liable to be dismissed.

23. Heard the learned Counsel for the parties and perused the records.

24. It is the case of the petitioner that the impugned award is arbitrary, illegal, discriminatory and violative of Articles 14, 16, 19 and 21 of the

Constitution of India as the learned Industrial Adjudicator failed to direct the respondent to regularise the petitioner from the initial date of appointment or from 1st April 1990 as per the respondent's policy but instead counted the period of continuous service from 17th July, 1996.

25. In rival submissions, the learned counsel appearing on behalf of the respondent refuted the submissions advanced on behalf of the petitioner by contending that the petitioner was engaged as a *Beldar* on daily wages muster roll in the exigency of work for specific work and he was not engaged in continuous employment as he had abandoned his employment.

26. Therefore, the limited question for adjudication before this Court is whether the impugned award suffers from any illegality or not. The relevant parts of the impugned award read as under:

> *"ISSUE NO. 1: Admittedly, there is no dispute about the relationship of employer and employee between the parties, as it is an admitted fact that claimant/workman was employed with the management as a Beldar on daily wages."*
> *"ISSUE NO.2 : From the pleadings as well as evidence adduced on record, it is proved on record that workman Mohkam Singh had already rendered the continuous service for a period of more than 240 days and as such absence from duty by the workman w.e.f. 9.1.1993 as alleged by the management amounted to misconduct for which management should have issued the chargesheet and got conducted an enquiry, but no chargesheet or domestic enquiry was got conducted by the management before terminating the services of workman."*

27. Upon perusal of the impugned award, it is made out that the petitioner filed his statement of claim praying for his reinstatement in service with the management of the respondent along with full back wages and with

continuity of service from 8th May, 1992 on daily wages subject to revision under the Minimum Wages Act, 1948.

28. The impugned award further notes that the respondent alleges that the services of the petitioner were not terminated, instead he himself stopped reporting for his duty from 8th January, 1993 without any prior intimation. In November, 1993, the petitioner remained absent as he was in police custody.

29. The relevant parts of the impugned award also make it clear that there was no dispute pertaining to the status of employment of the petitioner and the award denotes that the petitioner and the respondent are aligned in the understanding that the petitioner was employed with the management of the respondent as a *Beldar* for daily wages.

30. With regard to issue no. 1, i.e., *Whether the workman abandoned his employment?*, the learned Tribunal held in this regard that the respondent has failed to provide sufficient evidence to prove that the petitioner was engaged for specific work for a specific time period. On the other hand, the petitioner has provided documentary evidence in relation to his employment to show that he was on the daily wages muster roll from 8th May, 1982, and he was subsequently removed from service on 2nd August, 1989, and he was re-engaged in service from April, 1991. Furthermore, the respondent management has failed to provide evidence that the petitioner was informed that he must resume his duties. This leads to the understanding that there cannot be made any presumption about the abandonment of job by the Petitioner.

31. With regard to issue no. 2, the learned Industrial Adjudicator held that the petitioner has rendered continuous service for a period of more than 240 days and in case the petitioner was absent from his duty from 9th January, 1993, the respondent management would have taken action. It is pertinent to note that the learned Industrial Adjudicator observed that no charge-sheet was issued to the workman for his absence from duty and no domestic enquiry was conducted by the management.

32. The relevant provision delving into the aspect of retrenchment is Section 25-F of the Industrial Disputes Act, 1947 and the same reads as under:

> ***"25F. Conditions precedent to retrenchment of workmen.***
> *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*(a) *the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:[* * *] [Proviso omitted by Act 49 of 1984, Section 32 (w.e.f. 18.8.1984).]*(b)*the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] [Substituted by Act 36 of 1964, Section 14, for " for every completed year of service" (w.e.f. 19.12.1964).] or any part thereof in excess of six months; and* (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.] [Inserted by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).]"*

33. Upon perusal of the aforementioned section, it is clear that retrenchment by an employer may only take place by an employer if a one months' notice in writing is served on the employee who has provided continuous service.

34. In the instant case, the petitioner had worked for a period of more than 240 days' continuously. Therefore, the management of the respondent had a duty to serve a notice in writing to the Petitioner. Since there was no notice served, no charge sheet filed against the petitioner and no domestic inquiry conducted, the termination of services was held to be illegal and unjustified.

35. In the instant case, the impugned order of the Industrial Adjudicator is not merely based on the lack of notice provided to the Petitioner. A number of facts such as the absence of a charge-sheet, domestic inquiry and insufficient evidence for termination of the Petitioner have been used to arrive at the decision that the Petitioner should be reinstated for continuous service with back wages from 17th July, 1996.

36. In ***Bharatiya Kamgar Karmachari Mahasangh v. M/s. Jet Airways Ltd.*** **2023 INSC 646**, the Hon'ble Supreme Court held that an employee who has rendered more than 240 days of continuous service in an establishment is entitled to be made permanent. The relevant paragraph is as follows:

> *"a workman who has worked for 240 days in an establishment would be entitled to be made permanent, and no contract/settlement which abridges such a right can be agreed upon, let alone be binding. The Act being the beneficial legislation provides that any agreement/contract/settlement*

wherein the rights of the employees are waived off would not override the Standing Orders."

37. In view of the aforesaid judgment, it is pertinent to note that the Petitioner has rendered continuous service for a period exceeding 240 days with the Respondent. Therefore, the Petitioner should be regularised as a permanent employee with the respondent.

38. The settled position of law on the current issue relating to the regularization of workers has been propounded by the Hon'ble Supreme Court in ***Secretary, State of Karnataka &Ors. v. Umadevi (3) &Ors*. (2006 4 SCC 1.** The relevant paragraph has been reproduced below:

"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in

regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

39. Upon perusal of the above cited cases, it is crystal clear that the learned Adjudicator has rightly relied upon the settled position of law and therefore, held that the petitioner's services could not be regularised as there was a break in the service.

40. Furthermore, the aforesaid discussion also makes it clear that the petitioner workman cannot demand regularization merely on the basis of him working in the respondent department, rather his right to be regularized should be established.

41. In any case, the judgment rendered by the Hon'ble Supreme Court in the ***Uma Devi (supra)*** case clarifies that this Court should not exercise its power to interfere with the agreement between the employer and the employee if the same was done in consonance with the law of land.

42. Therefore, the question whether the petitioner workman is entitled for regularization on the basis of services rendered in the respondent department cannot be re-adjudicated by this Court and the findings of the learned Industrial Adjudicator are deemed final.

43. In view of the aforesaid discussion, this Court is of the view that the impugned award dated 3rd January, 2002 as passed by the learned Industrial Adjudicator, is thereby upheld.

44. Accordingly, the instant writ petition stands dismissed along with pending applications, if any.

45. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

May 31, 2024
rk/da/db

Click here to check corrigendum, if any