



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 15th May, 2024**
+ W.P.(C) 4607/2010
KISHAN PAL Petitioner

Through: Appearance not given
versus

MCD Respondent

Through: Ms. Saroj Bidawat, Standing Counsel
for MCD

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“i) to set aside/quash the order dated 02.04.2008 in I.D. No. 186 of 2007 passed by the Ld. POLC IV, Karkardooma Courts, Delhi; or

ii) or may pass such order or direction as may deem fit and proper in the interest of Justice.”

2. The petitioner was appointed as *beldar/mazdoor* on muster roll with the respondent in the year 1995.

3. On 1st July, 1999, his services were terminated by the respondent. Pursuant to the same, he sent demand notice dated 28th September, 2000, seeking reinstatement along with the full wages, however, the respondent



did not reply to the same.

4. Aggrieved by no- reply to the demand notice, the petitioner filed an industrial dispute before the Conciliation Officer and the same was referred by Appropriate Government vide order dated 12th June, 2001 to learned Tribunal for adjudication on following terms of reference:

"Whether the service of Shh Kishan Pal have been terminated illegal and/or unjustifiably by the management, and if so, to that relief he is entitled and what directions are necessary in this respect."

5. Pursuant to completion of the proceedings, the learned Tribunal, vide order dated 1st April 2005 awarded petitioner with lumpsum compensation of Rs. 40,000/- in lieu of reinstatement.

6. Aggrieved by the same, the petitioner filed writ petition bearing no. 223/2006. While adjudicating upon the aforesaid writ petition, the Coordinate Bench of this Court remanded back the matter for consideration by learned Labour Court vide order dated 9th October, 2007. Consequently, vide order dated 2nd April, 2004, the learned Labour Court passed the award rejecting the claims of the petitioner.

7. Aggrieved by which, the petitioner has filed the instant petition.

8. Learned counsel for the petitioner submitted that the impugned award is illegal, perverse and contrary to the records of the case, and merits interference of this Court.

9. It is submitted that the learned Labour Court failed to take into consideration that despite the fact no written statement/defence had been



filed by the respondent, the claims/reliefs sought by the petitioner were not being awarded.

10. It is further submitted that despite giving a categorical findings that the respondent has not led any evidence, the learned Labour Court erred in rejecting the claim of the petitioner.

11. It is contended that the impugned award suffers from illegality since Coordinate Bench of this Court remanded the award for reconsideration on merits, however, the learned Labour Court failed to discharge its duty, hence, the impugned order is liable to be set aside.

12. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought may be granted.

13. *Per Contra*, the learned Standing Counsel for the respondent vehemently opposed the contentions of the petitioner submitting to the effect that the impugned award does not suffer from any error/ illegality therefore, it does not merit any interference.

14. It is submitted that petitioner, being a daily wage worker, cannot compel the respondent to retain/regularize his position. It is further submitted that the respondent has not acted in contravention of any statutory provision.

15. It is contended that it a settled position of law that in case there is an engagement or appointment of a worker daily wages or casual basis, the same would come to an end when it is discontinued. It is further submitted that the petitioner being a daily- wager, his service can be terminated at the



discretion of the respondent.

16. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the record.

18. It is the case of the petitioner that the impugned awards passed by the learned Tribunal suffers from illegality as the learned Tribunal failed to appreciate that without any defence raised by the respondent before the learned Tribunal, the claim of the petitioner seeking reinstatement was wrongly disallowed.

19. In rival submission, it has been contended on behalf of the respondent that the impugned award as passed by the learned Tribunal is passed in accordance with the law, whereby, the learned Labour Court appreciated the material on record and held that the petitioner was employed as daily- wagger and his services come to an end, the moment he was terminated by the respondent.

20. Therefore, the issue which falls for adjudication before this Court is whether the impugned award merits interference of this Court under its writ jurisdiction or not.

21. Now, this Court will advert to perusal of the award dated 2nd April, 2004 and the relevant extract of the award is reproduced as follows:

“9. I have gone through the entire material appearing, on record and have given considered thought to the material available, on record. My views , are as under:-

10. It is the case of the claimant himself that he was muster roll



employee engaged by M.C.D, which is a statutory body, funded by the public money. One it is the case of the claimant himself that he was a daily wager, he was not entitled to compel the management to retain him in the job by the management.

11. It was observed by the Hon'ble High Court of Delhi in the matter of Ajay Kumar Sharma Vs. Presiding Officer, Labour Court No. VI and another decided by Hon'ble Mr. Justice Shiv Narayan Dhingra that:-

"An engagement on daily wages or casual basis would come to an end when it was discontinued."

12. It was also observed by the Hon'ble Supreme Court in the matter of Secretary, State of Karnataka and others V. Umadevi and others 2006 SCC that:-

*"The financial implications of any public employment, the viability of the department or of the instrumentality or of the project is also of u equal concern for the State. The Courts cannot impose on the State a financial burden of this nature by insisting on regularization or permanence in employment of those who are employed temporarily and are not needed permanently or regularly. The burden may become to heavy by such directions that the * undertaking itself may collapse under its own weight. The rule of equality in public employment is a basic feature of our Constitution. Unless an appointment is in terms of the relevant rules of recruitment after a proper completion amongst qualified persons, the same would not confer any right on the appointee. If an appointment is a contractual appointment, it comes to an end at the end of the project. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."*



13. Thus, in view of the authoritative pronouncement by the Hon'ble Supreme Court in *Uma Devi and others Vs. State of Karnataka*, on the showing of the claimant himself, he has no right of reinstatement nor he can compel the management for regularization or be declared permanent. It is also clear that the claimant, being a daily wager, his employment came to an end, the moment he is disengaged by the management. The claimant, therefore, is not entitled to anything. Apart from this, since M.C.D. is fund by public money it, therefore, cannot be burdened with any unnecessary liability. The claimant therefore, cannot be awarded any compensation when he has no right, under the law, to remain in employment of the management. It is also well established that the (government agencies have well defined method of employment/recruitment against a particular post.

14. For the reasons recorded, hereinabove, the claim of the claimant is, hereby, dismissed.”

22. Upon perusal of the above reproduced extracts, it is made out that the learned Tribunal held that the petitioner being a daily wage worker is not entitled to regularization or the respondent management cannot be compelled to retain the petitioner on his position. The learned Tribunal further placed reliance on the judgment of this Court in the case of *Ajay Kumar Sharma vs. Presiding Officer, Labour Court No. VI 2006 SCC OnLine Del 1059* wherein it was held that daily wages/ casual basis employment would conclude when the same is discontinued. Moreover, the learned Tribunal further opined that the aforesaid position of law has been further reiterated by the Hon'ble Supreme Court in the judgment of *State of Karnataka v. Umadevi (2006) 4 SCC 1*.

23. Whilst adjudicating upon the merits of the dispute, the learned



Tribunal held that the petitioner, being a daily wager, was terminated the moment, he is disengaged by the respondent. It further held that the respondent is funded by public money and such financial burden cannot be levied on it.

24. In view of the aforesaid discussion, the learned Tribunal held that since the petitioner is not entitled to be reinstated, he is not entitled for any compensation.

25. It is a settled position of law that despite an employee been working for a long time with the public authority, the ad- hoc /temporary/contractual employee does not have the vested right to seek regularization. In this regard, an exception is carved out where a temporary employee appointed at a sanctioned post in accordance with the recruitment rules by the competent authority can seek regularization on his/her post.

26. Moreover, the Courts have time and again reiterated the discretion vested with the public authority for regularization of the temporary employees and reiterated that the public authorities cannot be financially burdened by changing their status from temporary to regular employees.

27. In the impugned award, the learned Tribunal correctly held that the petitioner being a daily- wager is not entitled to be reinstated on his position after his termination, since the employment of the petitioner ends the moment the respondent management disengages him and he does not have a vested right to continue at the position for which he was employed.

28. In light of the same, this Court is of the opinion that the learned Tribunal correctly held that since the petitioner is not entitled to



reinstatement to the position he was appointed, therefore, he is also not entitled for compensation in lieu of reinstatement.

29. The writ of certiorari cannot be issued in the present matter since for the issue of such a writ, there should be an error apparent on the face of it or it goes to the root of the matter. However, no such circumstances are present in the instant petition.

30. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

31. In light of the same, this Court is of the view that the impugned award dated 2nd April, 2004 do not suffer from any illegality and do not warrant any intervention of this Court by way of issuance of writ of certiorari as the petitioner has not been able to make out a case in his favour.

32. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 15, 2024/gs/db/av

[Click here to check corrigendum, if any](#)