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

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Reserved on: 30.01.2023
Pronounced on: 21.03.2023

+ **W.P.(C) 8394/2004**

HARYANA ROADWAYS

..... Petitioner

Through: Mr. Devender Kumar Saini,
Advocate with Mr. Vikram
Saini, Advocate.

versus

YUNUS KHAN

..... Respondent

Through: Mr. N.S. Dalal, Advocate with
Mr. Devesh Pratap Singh,
Mr. Alok Kumar, Ms. Sweta
Kadyan and Ms. Rachana Dalal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition emanates from the award dated 07.05.2003 (*"impugned award"*) passed by the Presiding Officer, Labour Court I, Karkardooma courts, Delhi in I.D. No. 419/96 titled as *"Sh. Yunus Khan and The Management of M/s Haryana Roadways"*.
2. *Vide* the said impugned award, the learned Labour Court was pleased to hold that the services of Respondent/workman were terminated illegally and unjustifiably by the Petitioner/

Management in violation of Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 (“*I.D. Act*”). Accordingly, the learned Labour Court directed the Petitioner/Management to reinstate the Respondent/workman along with payment of back wages @ 25% of the last drawn wages and continuity in service.

3. The Petitioner/Management being aggrieved by the impugned award dated 07.05.2003, has preferred the present petition under the Article 226 of the Constitution of India, *inter alia* praying for quashing of the impugned award.

FACTS RELEVANT FOR THE ADJUDICATION OF THE PRESENT WRIT

4. It is the case of the Respondent/workman that he was appointed by the Petitioner/Management as a Helper w.e.f. 03.05.1985. The Respondent/workman continued to dispense his duty till 30.09.1988 when his services were terminated without compliance of provisions of I.D. Act by the Petitioner/Management. The Respondent/workman has alleged that after his termination, the Petitioner appointed (i) Shri Naresh Kumar (ii) Shri Satbir Singh (iii) Shri Bal Kishan (iv) Shri Ashok Kumar (v) Shri Jai Singh without giving any chance to him for offering his services.
5. The Respondent/workman has further claimed that he served the management with a demand notice dated 21.11.1995, but in vain. Thereafter, conciliation proceedings were conducted to reach a settlement, however the same resulted in failure. After being satisfied regarding existence of an industrial dispute between the parties, the appropriate government in exercise of the powers

conferred by Section 10(1)(c) and 12 (5) of the I.D Act, referred the present dispute to the learned Labour Court for adjudication with the following terms of reference:

“Whether the services of Shri Yunus Khan have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. The Respondent/workman filed his statement of claim before the learned Labour Court wherein it was averred that his services were terminated verbally without giving the mandatory notice or notice pay and without paying the retrenchment compensation. Allegations were made regarding the violation of Section 25-F, Section 25-G, & Section 25-H of the I.D. Act. The Respondent/workman prayed for a direction to reinstate him with continuity of service along with payment of full back wages.
7. Consequently, the Petitioner/Management to counter the claims made by the Respondent filed their written statement taking preliminary objection that the claim is not maintainable as the Respondent/workman was a daily wager and had not completed mandatory period of 240 days in the current year. Also, that his services were terminated by virtue of expiry of the contract. Allegations levelled by the Respondent/workman that the Petitioner/Management retained juniors of the Respondent/workman in the service and consequent violation of the principle of ‘*First come last go*’ were denied. The Respondent/workman filed his rejoinder wherein he assailed the allegations made in the written statement.

8. Based on the pleadings of the parties, the issues in terms of reference were framed on 22.09.1997 by the learned Labour Court.
9. In support of the claim, the Respondent/workman examined himself as WW1 relying upon the documents Ex. WW1/1 to Ex. WW1/16. On the other hand, the Petitioner/Management examined Sh. Rajender Singh, clerk as MW1 who relied upon the documents Ex. MW1/1 to Ex. MW1/12 and Sh. Devkinandan, clerk as MW2
10. Learned Labour Court after examining the evidence adduced by the parties, came to the conclusion that the Respondent/Workman has not completed 240 days of service with the Petitioner/Management and hence there is no violation of Section 25-F of the I.D. Act. However, the learned Labour Court held that the services of the Respondent/workman were terminated illegally in violation of Section 25-G & 25 H of the I.D. Act. as the Petitioner/Management appointed Sh. Naresh as a helper after termination of the services of the Respondent/workman, without calling the Respondent for re-appointment first. Accordingly, *vide* the impugned award dated 07.05.2003, learned Labour Court answered the terms of reference in favour of the Respondent/workman and was awarded reinstatement with continuity of service along with 25% of the back wages.
11. Aggrieved by the same, the Petitioner/management *vide* the present petition is *inter alia* praying to setting aside the Impugned Award.
12. It is to be noted that the Respondent /Workman also challenged the impugned Award by filing W.P(C) No. 2293/2005, claiming 100%

backwages. However, the Respondent/Workman withdrew the said Writ Petition vide order dated 16.09.2013.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER/ MANAGEMENT

13.Mr. Devender Kumar Saini, learned counsel on behalf of the Petitioner has argued that the Respondent/workman was appointed by the Petitioner/Management on various posts at different periods of time. The Respondent/workman was time and again appointed and re-appointed for specific fixed basis with similar terms and conditions. He was initially appointed as seasonal water carrier, then re-appointed as peon and helper as per the requirement of the Petitioner/Management. It is submitted that the Respondent/workman has himself categorically admitted in his cross examination that he used to be 'appointed and re-appointed' at different periods of time. His admission made it cogent that his services were purely temporary/contractual and was need based and time based.

14.It is further averred by the learned counsel that due to the temporary nature of the employment, the termination of the Respondent/workman with the end of fixed term of service is squarely covered under Section 2(oo)(bb) of the I.D. Act and such termination is not 'retrenchment'. Thus, such automatic termination of service with the end of fixed term of contract cannot be said to be in violation of the provision of Sections 25-F, 25-G and 25-H of the I.D. Act.

15. The learned counsel has placed reliance upon the findings of the learned Labour Court specific to the issue whether the Respondent/workman has completed 240 days of continuous service in one calendar year or not. It is submitted that the learned Labour Court in the impugned award has held that the Respondent/workman has not completed 240 days in a period preceding 12 months. It is further highlighted that since the Respondent/workman had not challenged the said finding, it attained finality.
16. To strengthen the arguments advanced, the learned counsel has relied upon the judgements delivered in *Bhavnagar Municipal Corpn. v. Salimbhai Umarbhai Mansuri* reported as (2013) 14 SCC 456; *Harmohinder Singh v. Kharga Canteen, Ambala Cantt.* reported as (2001) 5 SCC 540; *Central Bank of India v. S. Satyam* reported as (1996) 5 SCC 419; *State of Karnataka v. Umadevi (3)* reported as (2006) 4 SCC 1; *Haryana Roadways Delhi v. Rakesh Kumar*, reported as 2015 SCC OnLine Del 8829.
17. With these submissions, learned counsel for the Petitioner prayed for setting aside of the impugned award.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT/WORKMAN

18. Mr. N.S. Dalal, learned counsel appearing on behalf of the Respondent/workman vehemently argued against the maintainability of the present petition. Learned counsel submits that the impugned award is based on correct appreciation of evidence, facts and materials placed on record. It is submitted that the Petitioner/Management failed to point out perversity in the

impugned award to challenge the findings recorded by the learned Labour court.

19. Learned counsel has drawn attention of this Court towards the fact that the Respondent/workman worked with the Petitioner/Management intermittently at different capacities/roles, which were perennial in nature. It is submitted by the learned counsel that the Petitioner/Management indulged in unfair labour practice by terminating services of the Respondent/workman while retaining services of other individuals who were juniors to the Respondent/workman. It is further submitted that the Respondent/workman has furnished names of said persons and this has not disputed and denied by the Petitioner during the course of trial that such persons were appointed in violation of Sections 25-G/H of the I.D. Act. Such actions of the Petitioner/Management are violative of the doctrine of *'Last come First Go'* which is also accepted by the learned labour court.

20. It is further submitted by the learned counsel that the I.D. Act being a beneficial piece of legislation has to be accorded a liberal and wide interpretation to achieve the objectives of the legislation i.e. to secure industrial peace and harmony. If the contentions of the Petitioner/Management are accepted by this Court, it will render provisions of Sections 25-G/H of the I.D. Act as otiose and defeat the very objectives of the legislation. Furthermore, otherwise also, based on the touchstone of Article 14 of the Constitution of India, action of the Petitioner/Management is

manifestly capricious and unfair, hence the present petition is liable to be dismissed along with imposition of cost.

21. For buttressing the arguments made, the learned counsel has relied upon the judgments delivered in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, reported as (1978) 2 SCC 213; *Central Bank of India v. S. Satyam*, reported as (1996) 5 SCC 419; *State of Karnataka v. Umadevi* (3), reported as (2006) 4 SCC 1; *Jaipur Development Authority v. Ramsahai* reported as (2006) 11 SCC 684; *Harjinder Singh v. Punjab State Warehousing Corpn.* reported as (2010) 3 SCC 192; *Ram Narain Singh v. State of Punjab*, reported as (2015) 13 SCC 458.

22. In light of the same, it has been prayed by the learned counsel that this Court shall be pleased to uphold the award and grant to the Respondent/workman pensionary benefits along with other consequential benefits since the Respondent/workman has attained superannuation in the month of January 2023.

LEGAL ANALYSIS

23. This Court has heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

24. In the present case, learned Labour Court held that the termination of the Respondent/Workman was in violation of Sections 25 G & 25 F of the I.D. Act. It is profitable to reiterate Sections 25 G & 25 F of the ID Act, for better appreciation of the case in hand:

“Section 25 G of the ID Act

Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be

retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Section 25H of the ID Act

Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons.”

25. Section 25 G of the I.D. Act deals with procedure for retrenchment and Section 25 H of the I.D. Act deals with re-employment of retrenched workmen. Both these Sections form part of Chapter V-A of the I.D. Act. The precondition for attracting these provisions are that there has to be retrenchment. This legal position has been reiterated by the Hon'ble Supreme Court in ***Haryana State Agricultural Marketing Board Vs Subhash Chand & Anr*** reported as **2006 (2) SCC 794**, which reads as follows:

“11. The question as to whether Chapter VA of the Act will apply or not would depend on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter VA thereof would not arise.

12. Central Bank of India V. S. Stayam & Ors. [1996 (5) SCC 419], whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of

termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”

26. In view of the law laid down by the Hon'ble Supreme Court, it is imperative for this Court to examine, whether there is retrenchment as envisaged under Section 2 (oo) of the I.D. Act in the present case. Retrenchment is defined under Section 2 (oo) of the I.D. Act, which reads, as follows:

“Section 2(oo)(bb) of the ID Act

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.”

27. The definition of "Retrenchment" was introduced in the I.D. Act by the Act 43 of 1953 with effect from 24.10.1953. Originally, there were only two exceptions to the definition of retrenchment, i.e 2(oo)(a) and 2(oo)(b). By the Amending Act 49 of 1984, two additional exceptions were introduced to the definition of retrenchment by inserting 2(oo) (bb) & 2 (oo) (c) with effect from 18.8.1984.

28.The definition of ‘retrenchment’ is conclusive and it has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever except the four exceptions carved out therein. As per Section 2 (oo) (bb) of the I.D. Act, termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry does not amount to retrenchment. This well settled position of law has been reiterated by various High Courts and Hon’ble Supreme Court in catena of cases.

29.Based on the said settled legal position, this Court now proceeds to examine the facts of the present case. The Petitioner/Management placed on record the appointment letter/engagement letter issued to the Respondent/Workman as Ex. MW1/1 to MW1/11. Upon perusal of the appointment/engagement letters filed by the Petitioner/management, it is evident that the Respondent/Workman was appointed during the period from 1985 to 1988 and was called upon for work intermittently with gaps in between the appointments. The Petitioner/Management has taken a firm stance that the Respondent/workman was appointed strictly for a specific period as specified in the engagement letters. He was not terminated through any order, but rather by virtue of the expiration of the term of contract. It has been contended by the Petitioner that the present case squarely falls under the claws of Section 2(oo)(bb) of the I.D. Act.

30. The engagement letters, specifically expresses that the Respondent/Workman is appointed for a specific duration. The fact that the Respondent was appointed on different posts i.e. peon, seasonal water carrier, helper at different time is indicative of the fact that his service was requirement and demand based. Further, the contention raised by the Respondent/workman that the Petitioner/Management deliberately created artificial breaks in between his appointment does not appeal to this Court. On perusing the Lower Court Record, the engagement letters brought on record by the respective parties clearly show that there existed considerable gaps in between the subsequent appointments. Further, the MW2 has categorically deposed that the Respondent was appointed on the leave vacancies and suspension vacancies. In such circumstances, it is safe for this Court to conclude that the learned Labour Court failed to give adequate attention to the engagement letters and erred in evaluating the nature of employment. It is clear as daylight that the employment of the Respondent was purely contractual, and need based in nature.

31. Since the termination was a result of non-renewal of contract of employment on its expiry, it does not qualify to be termed as 'retrenchment'. The same is covered by the exception given in sub-clause (bb) of Section 2(oo) of the I.D. Act. The learned Labour Court while directing the reinstatement of the Respondent/workman in the service failed to take a wider view of the circumstances and of the consequences that will follow. In view of the detailed discussions herein above, this Court is of the

considered view that the case of the Respondent/workman falls within the exception of Section 2 (oo) (bb) of the ID Act and hence it is not a case of retrenchment. Since there was no retrenchment both Sections 25 G & 25 H are not attracted in the present case.

32. In light of the aforesaid discussion, this Court is of the considerate view that the impugned award dated 07.05.2003 passed by the Presiding Officer, Labour Court I, Karkardooma Courts, Delhi in I.D. No. 419/96 suffers from perversity and glaring error of law. Since there was no retrenchment, the Respondent/Workman is not entitled for the reinstatement in service or back wages.

33. As stated above, this Court vide order dated 06.10.2005 extended the benefit under Section 17-B of the I.D. Act to Respondent/Workman. As held by the Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr* reported as **2019(4) SCC 534**, the proceedings under Section 17-B of the I.D. Act are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the I.D. Act is not recoverable.

34. It is also noted that the Petitioner/Management in compliance of the order dated 08.07.2004, deposited with the Registrar General of this Court a sum of Rs. 50,000/- vide cheque no. 339222 and the said amount is lying in FDR. This Court vide order dated 06.10.2005 clarified that in the event the Petitioner succeeds in the

present writ Petition, the Petitioner shall not be entitled to the accrual on the fixed deposit and the said amount shall be released to the Delhi High Court Legal Service Authority. In view of the same, it is directed to release the principal amount of Rs. 50,000/- to the Petitioner. The interest accrued thereon shall be released to the Delhi High Court Legal Service Authority.

35. In view of the detailed discussion herein above, the impugned Award is set aside.

36. The present Writ Petition is allowed. No orders as to the cost.

GAURANG KANTH, J.

MARCH 21, 2023
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