
(2006) 08 DEL CK 0065

In the Delhi High Court

Case No : WP (C) No. 3941 of 1995

BSES Yamuna Power Ltd. previously known as Delhi Electric
Supply Undertaking

APPELLANT

Vs

Mr. Rakesh Kumar

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25(F)

Citation : (2006) 132 DLT 439 : (2006) 111 FLR 534 : (2007) 1 LLJ 253

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jayant Nath and Nitesh, for the Appellant; Ashok Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the legality of award dated 29.5.1995 passed by Labour Court-VII, Delhi. The factual background in brief is as under.

2. The respondent was appointed as copyist on 29.9.1989 by the petitioner initially for a period of three months for doing totaling in the ledger and preparing summaries of the ledger for the year 1986-87. Initially approval was given by the competent authority for appointment of daily wager for a period of three months. After the computation of accounts for the year 1986-87, the work of computation of accounts for the year 1987-88 was required to be completed. Consequently three months' more approval was given by the competent authority. The appointment of the respondent was extended in this manner up to 20.9.1990. However, since no extension was granted after 20.9.1990, the services of the respondent were dispensed with. The respondent raised an industrial dispute alleging that he has been retrenched without following procedure of provisions of Section 25(F) of Industrial Disputes Act (hereinafter referred to as "the Act") and, Therefore, his retrenchment was illegal. He claims

reinstatement with full back wages. The petitioner took the plea before the Industrial Tribunal that the appointment of respondent was for a specific purpose and for a specific period and the moment the project/purpose was over, the services of the respondent were not required and no extension was given. It was not a case of retrenchment but the case fell u/s 2(oo)(bb) of the Act. The Industrial Tribunal concluded that case of the respondent was not covered u/s 2(oo)(bb) of the Act since the respondent had completed 240 days within a period of 12 calendar months, counting backward, it was a case of retrenchment. It was also observed that the management has not proved that work for which the workman was employed was not still continuing. The duty, which was the workman was performing, was not in existence.

3. A perusal of testimony of MW1 would show that the petitioner's witness had specifically stated that the respondent was employed for totaling work of ledger and summaries in respect of sales accounts for the year 1987-88. He was initially appointed for three months. Thereafter, his appointment was extended from time to time. No suggestion was put to this witness that the work for which the respondent was appointed was still continuing. The only suggestion given to him was that the respondent worked from 29.9.1989 to 20.9.1990.

4. The petitioner's contention is that the Presiding Officer arbitrarily and illegally held that the respondent was terminated and his case was not covered u/s 2(oo)(bb) of the Act and the award was contrary to evidence. The respondent was engaged only for a specific work and cannot said to have been terminated.

5. In the counter affidavit filed by the workman, it is stated that the writ petition was not maintainable because the findings of facts arrived at by the Labour Court was challenged. No substantial question of law has been raised in the writ petition. It was also submitted that the petitioner has annexed documents P1 to P4 with the writ petition and these documents were not proved before the Labour Court and the petitioner cannot be allowed to make out a new case. On facts, it was stated that the petitioner was engaged for the work which was of permanent nature. The respondent was engaged as a daily wager who was appointed with the petitioner, was allowed to continue when the services of the respondent were terminated. The petitioner had not produced any documentary evidence before Labour Court and the petitioner has examined only one witness Ved Prakash while respondent examined himself as well as place on record documents.

6. Although this Court cannot re-appreciate the evidence produced before the Tribunal but the court can peruse the record to see if order suffers from perversity, the contention of the respondent that the petitioner has not proved that his appointment was for short period is belied from the testimony of Ved Prakash ME1 who had categorically stated that the respondent was appointed on daily wages in order to do totaling work of ledger and summaries for the year 1987-88. His initial appointment was for three months. No suggestion has been given to this witness that he was not appointed for this specific work and his appointment was not made temporarily for the specific work and was extended

from time to time for this work.

7. It is apparent that the appointment of the respondent was for a specific purpose made temporarily on daily wages basis when the work was over, no extension was given to him. Section 2(oo)(bb) of the Act is as under:

(oo) "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 non-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;

8. A perusal of Sub-section (bb) of the Act clearly shows that termination of services of workman as a result of non renewal of the contract of employment does not amount to retrenchment. In AIR 2006 SCC 387 Punjab State Electricity Board v. Darbara Singh, the Board had appointed the respondent as peon on daily wages basis from 8.1.1988 to 29.2.1988 and his period of service was extended from time to time and his services were dispensed with in June, 1989. The respondent therein had raised an industrial dispute and the Labour Court passed an award in favor of the respondent. Writ petition filed before the High Court was dismissed and so the matter had come up before the Supreme Court. Supreme Court observed that the engagement of the respondent was for a specific period and conditional and held that the termination of workman engaged for a specific work, did not amount to retrenchment. Section 2(bb) of the Act was considered and it was observed that such a case as that of respondent was covered u/s 2(oo)(bb) of the Act.

9. In Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, Dhenkanal, the appellant was appointed by the respondent as Junior Typist on N.M.R. basis for a period and was engaged again and again on daily wage basis for specific periods. When no extension was given, he raised a dispute which was referred to the Labour Court. the Labour Court held the termination illegal for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The High Court set aside the Labour Court's award and hence the appellant came before Supreme Court. Supreme Court observed that the appointment of writ petitioner was on daily wages basis for a fixed period. The contractual period of engagement ended and there was no further renewal since engagement was for a fixed period. The order of High Court

setting aside the order of Labour Court was not bad.

10. In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of respondent is squarely covered u/s 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment. The order of Tribunal is perverse.

11. I, Therefore, allow this writ petition. The award of Labour Court is set aside. No order as to cost.