

(2013) 01 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) 5803 of 2008 and CM 11126 of 2008

D.D.A.

APPELLANT

Vs

Rohtash Panwar and Another

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 1 LLN 474

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; Pradeep Kumar Arya with Ms. Huma Mehfooz, Advocates for Respondent No. 1 and Mr. Amar Nath Saini, Advocate, for the Respondent

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner seeks setting aside of the award dated 21st January, 2008 passed by the learned Presiding Officer, Industrial Tribunal in Industrial Dispute ID No. 482/89/07 wherein the learned Tribunal granted the relief of reinstatement with 50% back wages to the workmen. Learned counsel for the Petitioner contends that the learned Trial Court erred in not appreciating that the Respondents were engaged for a short period on account of temporary exigencies of work and their services were disengaged after completion of the project. Even if there were some technical flaws in the disengagement of their services, reinstatement could not have been directed by the learned Trial Court. Respondent No. 1 worked with the Management from 1st February, 1986 to 1st June, 1988 and Respondent No. 2 worked from 1st January, 1986 to 1st June, 1988 with breaks and after completion of the contract work they were disengaged and in such a case their disengagement would not amount to retrenchment. Both the Respondents worked as casual/muster roll/daily wagers and in such a case relief of reinstatement with 50% back wages would not be justified. It is further contended that the Petitioner has discontinued the practice of engagement of workers on casual basis for a long time and at present, there

are hardly any employees working on casual basis and if the Respondents are reinstated in services it would lead to recreation of casual/muster roll employment in DDA. It is lastly contended that Respondent No. 1 has stated in his cross examination that he is engaged in agricultural work, the workmen have already received their entire back wages from 1988 till the filing of the present writ petition in 1996 and also have been receiving the wages u/s 17B of the Industrial Disputes Act, 1947 (in short "the ID Act") for a long time, thus adequate compensation has already been paid to them.

2. Per contra learned counsel for the Respondents contends that the Respondents were not engaged for any particular project or on account of temporary exigencies of work. The Petitioner has not produced any document to show that the work was of a temporary nature. Petitioner has many ongoing projects and the Respondents may be reinstated with their appropriate designation in those projects. It is further submitted that u/s 25F and 25G of the ID Act, there is no discrimination between regular and casual employees and the same are equally applicable to both categories of workmen. It is lastly contended that the workmen were doing the work equivalent to the regular employees and their counterparts were regularized however, the workmen were not.

3. I have heard learned counsel for the parties and perused the record.

4. Briefly the case of the Petitioner is that the Respondent No. 1 was engaged with the Management with effect from 1st February, 1986 and Respondent No. 2 w.e.f. 1st January, 1986 on casual basis. They were engaged for a particular work namely construction of 288 MIG DUs at Budella and payments were made to them from the head recoverable from the contractor. Since the Respondents were engaged for a particular work, on completion of the project, their services were terminated on 1st June, 1988. On the Respondents raising an industrial dispute, the same was referred for adjudication by the appropriate government on the following terms of reference:

Whether the termination of services of S/Shri Rohtas Panwar and Mahavir Singh is illegal and/or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?

5. On completion of pleadings, issues were framed. However, the Management did not appear before the learned Trial Court and was thus proceeded ex-parte. An ex-parte award dated 12th January, 1996 was passed by the learned Trial Court granting the relief of reinstatement with full back wages to the Respondents. A writ petition was preferred before this Court as W.P. (C) No. 3240/1996 by the Petitioner in which this Court on 12th July, 2007 set aside the ex-parte award and the matter was remitted to the Trial Court to decide the same on merits. The matter was reheard leading finally to the passing of the impugned award dated 21st January, 2008.

6. Respondent No. 1 has in his evidence by way of an affidavit stated before the learned Trial Court that he joined the Management on 16th January, 1986 as a

Beldar and was treated as a casual/daily rated/muster roll workers and was being paid wages as fixed and revised from time to time while his counterparts who were doing identical work were treated as regular employees. He has further stated that the job against which he was working was of a regular and permanent nature however, his services were illegally terminated by the Management on 8th June, 1988 although several of his juniors were retained in the jobs. Management had not displayed any seniority list. No notice was given nor any service compensation was offered/paid at the time of his termination and as such his termination was illegal. The same stand was taken by the Respondent No. 2 in his evidence by way of an affidavit except that he stated that he had joined Management on 8th December, 1985.

7. MW1 Mohd. Tariq has in his evidence by way of an affidavit before the Trial Court stated that the workmen worked as a casual/muster roll/daily wagers and were not given work of sensitive nature like the regular employees, so they were neither performing the work of same nature nor bore the same responsibility as the regular employees. They were working on a muster roll with usual work and purely on a temporary nature of job and when the work was completed at site for which the claimants were engaged on daily wages, they were removed from services as their services were no longer required. The workmen were never in permanent employment of DDA. Since the workmen were engaged on a muster roll, the question of identical work does not arise.

8. In S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, the Hon"ble Supreme Court held:

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of Sub-clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

9. Although, in the present case the Management has claimed that the workmen

were employed on a temporary job as per the exigencies and requirement of the work, however it has not produced any document before the learned Trial Court to show that the nature of work was temporary and the services of the workmen engaged therein were to be automatically terminated on the completion of the work. Before this Court also the Petitioner has contended that the project with which the Respondents were engaged has since been completed, hence their services are no longer required with the Management. However, no proof of this has been produced. Management has also not produced any contract or any other document to show that the Respondents were made aware of the fact that their services were engaged only for a fixed duration and would be automatically terminated on the completion of their tenure or the project with which they were engaged. As per S.M. Nilajkar (*supra*), the onus was on the Management to prove that the services of the Respondents were engaged for a short duration which they have failed to do so. Hence, the termination of the workmen amounts to retrenchment under the ID Act.

10. Further the Hon'ble Supreme Court in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, has held:

14. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

16. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

17. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.

11. Both the workmen have stated in their evidence by way of an affidavit that they were employed as casual/muster roll/daily wager. It is not their case that they were regularized with the Management. Further, although, the Respondents have stated that several of their juniors were working as regular employees and their services were continued with the Management, no evidence has been led on

this aspect. No application was filed on the behalf of the Respondents before the learned Trial Court for the production of the seniority list. In such a case, it would not be justified to conclude that while dismissing the services of workmen, several of their juniors were continued and Section 25G of the ID Act was violated.

12. As the workmen have admitted the factum of being engaged as daily wagers and also the fact that they have not worked for more than two years with the Management, in light of Jagbir Singh (supra) compensation in lieu of reinstatement would be an appropriate relief instead of reinstatement with back wages. Since the Respondents have already received back wages from the date of termination till 1996 before filing of W.P. (C) No. 3240/1996 along with wages u/s 17B of the ID Act during the pendency of the two writ petitions, I deem it fit to direct the Petitioner to pay a further sum of Rs. 50,000/- each to the Respondents within eight weeks in lieu of the relief of reinstatement with 50% back wages granted by the learned Trial Court. The impugned order is modified accordingly. The Petition and application are disposed of accordingly.