
(2014) 01 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) 8144 of 2007

Municipal Corporation of Delhi

APPELLANT

Vs

Laxmi Devi

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16 226 227
Industrial Disputes Act, 1947 — Section 2(oo) 2(oo)(bb) 25(F) 25(G) 25(H)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6P

Citation : (2014) 4 AD 600 : (2014) 208 DLT 44

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Mini Pushkarna, for the Appellant; Rajiv Aggarwal, Advocate and Mr. Anuj Aggarwal, for the Respondent

Final Decision : Partly Allowed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the Award dated December 18, 2006 in I.D. No. 116 of 2006 passed by the Presiding Officer, Industrial Tribunal whereby it held that the respondent is entitled to reinstatement with 50% back wages and with a further direction to consider her case for regularization as "Safai-karamchari" as per policy of regularization, taking into consideration her seniority with effect from June 14, 2004. It is not in dispute that the respondent was engaged by the petitioner Municipal Corporation of Delhi. It is the case of the respondent that she was engaged as a leave substitute "Safai-karamchari" since June 14, 1994 and she was being paid wages as revised from time to time under the Minimum Wages Act. According to her, her services were terminated in the month of November, 2000 during the pendency of the conciliation proceedings without assigning any reason which is illegal as she was working against a regular nature of job. The petitioner Municipal Corporation of Delhi (MCD) filed a reply wherein it admitted the fact that the respondent was working as a substitute "Safai-karamchari". According to the MCD, she was absenting herself without any information. It is also the

MCD's stand that the period of her absence from duty wilfully is of more than two years. MCD also states as and when regular "Safai-karamchari" remains absent by availing Earned Leave or Medical Leave, her services were taken.

2. The respondent filed an affidavit on November 23, 2005 before the Industrial Tribunal pursuant to a direction given by the Tribunal to place the name of co-workers and juniors who were retained or taken into the employment of the MCD in contravention of Sections 25(G) or 25(H) of the Industrial Disputes Act, 1947 (in short, the "Act"). In pursuance to that order, in the affidavit filed, the respondent had named five co-workers who were junior to her having been engaged in the month of November, 1994.

3. The MCD through Mr. Surender Singh, Sanitation Superintendent, West Zone, MCD clarified that out of five co-workers named by the respondent in her affidavit, four co-workers i.e. "Safai-karamcharis" are still working as substitutes. He would further state that out of the five co-workers, one Smt. Mukesh, W/o Sh. Jai Narayan who was quite senior-most substitute of the year 1992, has been regularized as per policy of the MCD.

4. The Tribunal, on the basis of the pleadings and the evidence led before it, has come to a conclusion that the petitioner MCD has failed to prove that there is any written contract with the respondent to show that she was employed only as a leave substitute. The Tribunal also held that the petitioner MCD could not prove that the respondent was terminated after following due process of law by issuing one month's notice or by paying service compensation as required under law.

5. The Tribunal was of the view since no charge-sheet was given to her nor any enquiry was conducted against her and during her cross-examination, no suggestion has been put to her that no junior to her has been retained in service or that service compensation or notice pay was offered to the workman and that the petitioner MCD also failed to show that the respondent was gainfully employed, held the termination of the respondent as unjustifiable.

6. Ms. Mini Pushkarna, learned counsel for the petitioner would urge (1) that the engagement of the respondent being against a leave substitute, she has no right for continuance in such engagement. In any case, after August 2000, she, on her own, stopped coming to perform her duties and it is a case of abandonment and the liability of reinstatement and 50% back wages could not be fastened upon the petitioner MCD. (2) She also challenges the direction of the Tribunal wherein the Tribunal has directed to consider the case of the respondent for regularization in terms of the policy, keeping in view her seniority as June 14, 1994. Learned counsel would also urge that the respondent is not entitled to any relief as she has not performed her duty for 240 days in any calendar month. According to her, after the judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, the policy of regularization has been frozen. In other words, the Corporation is no longer regularizing the daily wagers who have been engaged after the Judgment. She would further submit despite

opportunities, no response was filed on behalf of the respondent.

7. Ms. Mini Pushkarna, Advocate as an alternative submission would state that non-compliance of provisions of Sections 25F, 25G and 25H of the Act would not necessarily entitle the workman to the relief of reinstatement with back wages as a matter of right. It is further submitted that the respondent was engaged in an ad-hoc capacity and more than 14 years have elapsed since her termination and thus, in such a case the incumbent should be compensated in lieu of reinstatement with back wages. Reliance in this regard is placed on the following decisions:

- a) Jaipur Development Authority Vs. Ram Sahai and Another,
- b) Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others,
- c) Haryana State Electronics Development Corporation Ltd. Vs. Mamni,
- d) Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar,
- e) Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, and
- f) Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another,

8. Mr. Rajiv Aggarwal, learned counsel appearing for the respondent would support the Award of the Tribunal inasmuch as even though her engagement was as a substitute "Safai-karamchari", the MCD has been illegally retaining persons junior to respondent in violation to the principle of "last come first go". According to him, this is in violation of Section 25(G) and (H) of the Act. He has also drawn my attention to the cross examination of the Management Witness No. 1 namely Arunesh Upadhyay wherein according to Mr. Aggarwal, the witness has admitted that the seniority list category-wise is maintained in MCD. He would also state that Mr. Upadhyay, MW1 has also admitted that the "Safai-karamchari" who joined the employment of the MCD in the year 1994, 1995, 1996 and 1997 are still working with the MCD. He has also drawn my attention to the statement made by Mr. Upadhyay that the services of the employees are regularized in a phased manner as per the policy of the MCD. According to Mr. Upadhyay, the name of the respondent was deleted from the Attendance Register in November, 2000 as she has abandoned her job. Mr. Aggarwal, learned counsel also laid emphasis on the statement of MW1 that no charge-sheet was given to her nor any enquiry was conducted against her.

9. Mr. Rajiv Aggarwal, learned counsel has also drawn my attention to the deposition of MW2 namely Mr. Surender Singh, wherein Mr. Surender Singh has stated that the workmen as mentioned in his affidavit are still working with the management (MCD) as substitute "Safai-karamcharis" and the case of Smt. Angrejo, Smt. Santosh and Sh. Ranbeer is under process of regularization as they are continuously performing their duties in MCD. Mr. Aggarwal also lay stress on the statement of MW2 wherein MW2 has stated that it is correct that the above named workmen are the co-workers of the respondent. He has also

drawn my attention to the deposition of MW2 wherein he states that no call letter was sent to the respondent to rejoin duties. It is also the submission of Mr. Rajiv Aggarwal that when the termination is in violation of Section 25(F), 25(G) and 25(H) of the Act, the only relief the workman is entitled to is that of reinstatement with back wages. He has drawn my attention to the opinion of the Single Judge of this Court in W.P.(C) No. 6024 of 1999 decided on August 25, 2011, wherein the petitioner was also the Municipal Corporation of Delhi. According to him, in the said case, the learned Single Judge has come to a conclusion that lump sum compensation in lieu of reinstatement cannot be adequate and satisfactory remedy for the workman in that case. He would state that similar direction needs to be given, moreso, when persons junior to the respondent have been retained in the employment. Lastly, he would urge that insofar as the relief of regularization granted by the Tribunal, coupled with the fact that MCD has taken a stand that the policy of regularization has been frozen, he would be satisfied if the direction is retained with a caveat that if the policy is still in vogue, the case of the respondent be also considered.

10. Having heard the counsel for the parties and on consideration of the pleadings before the Labour Court and the conclusion of the Labour Court in the impugned award, primarily, the issues which falls for my consideration are: (1) whether the petitioner has terminated the respondent while retaining persons junior to her in violation of principle of "last come first go" as embodied in Section 25(G) of the Act; (2) whether the relief granted by the Tribunal in granting reinstatement with 50% back wages is justified; (3) Whether the Tribunal was justified in giving direction to the petitioner to consider the case of regularization as "Safai-karamchhari" as per policy of regularization after taking into consideration her seniority w.e.f. June 14, 2004. One aspect which I intend to refer to is about the fact of the respondent completing 240 days between the period November, 1999 and November, 2000 when her services were said to have been terminated. In terms of an additional affidavit filed by the petitioner in these proceedings, on April 09, 2013 wherein a chart depicts that the respondent had only worked for 5 days in the preceding 12 months before her termination and hence, the petitioner was not required to comply with the provisions of Section 25(F) of the Act.

11. On this, Mr. Rajiv Aggarwal, learned counsel for the respondent would contend that the termination of the respondent was still illegal as the petitioner has retained persons junior to the respondent, thereby violating the principle of "last come first go" and the principle of equality enshrined in Section 25(G) and (H) of the Act. This submission of Mr. Aggarwal has substance inasmuch as it is noted that persons junior to the respondent who were engaged by the petitioner subsequent to the respondent, were still engaged. The position of law insofar as Section 25(G) of the Act is concerned, is quite well settled.

12. In the decision reported as Samishta Dube Vs. City Board, Etawah and Another, the Court was dealing with section 6P of the Uttar Pradesh Industrial

Disputes Act, 1947 which is *pari materia* with section 25G of the Act. In the said decision it was held by the Court that an employer can deviate from the rule of "last come, first go" because section uses the word "ordinarily". It was further held by the Court that the employer may deviate from rule in cases of lack of efficiency or loss of confidence, etc. but in such a case the onus will be on the employer to justify such deviation.

13. Relevant would it be to state that a distinction exists with regard to the legality of the order of termination in a case where Section 25F of the Act applies on the one hand, and a situation where Section 25G thereof applies on the other. The Supreme Court in the decision reported as *Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar*, held that:

...where Section 25F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions of Sections 25G and 25H thereof he may not have to establish the said fact.

14. In the decision reported as *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , it was held that for attracting the applicability of Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.

15. In decision reported as *Central Bank of India Vs. S. Satyam and others*, the Supreme Court considered an issue in the context of Section 25H of the Act, which casts a duty upon the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment on a preferential basis. It was argued on behalf of the bank that an offer of re-employment envisaged in Section 25H should be confined only to that category of retrenched workmen who are covered by Section 25F and a restricted meaning should be given to the term "retrenchment" as defined in Section 2(oo). While rejecting the argument, this Court analysed Section 25F, 25H, Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 referred to Section 25G and held:

Section 25H then provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the" retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of reemployment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in

the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25H is confined to the category of retrenched workmen to whom Section 25F applies. We are unable to accept this contention.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25H to the other retrenched workmen not covered by Section 25F does not, in any manner, prejudice those covered by Section 25F because the question of consideration of any retrenched workman not covered by Section 25F would arise only, if and when, no retrenched workman covered by Section 25F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect. The plain language of Section 25H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched (sic) 427 workmen" must relate to the wide meaning of "retrenchment" given in Section 2(oo). Section 25F also uses the word "retrenchment" but qualifies it by use of the further words "workman... who has been in continuous service for not less than one year". Thus, Section 25F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman, who has been in continuous service for not less than one year". It is clear that Section 25F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25F is confined only to the mode of retrenchment of workmen in continuous service for not less

than one year. Section 25G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25F.

(emphasis supplied)

16. Thus, on the perusal of the above decisions it becomes clear that:

a) The employer may deviate from rule of "last come first go" enshrined in section 25G of the Act in cases of lack of efficiency or loss of confidence, etc. on the part of the workman but in such a case the onus will be on the employer to justify such deviation;

b) It is sufficient for a workman to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason for the purpose of applicability of 25G of the Act.

c) Section 25G of the Act prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25F.

17. In the case in hand, the testimony of two witnesses appeared on behalf of the petitioner management is of relevance. The MW1 has stated that seniority-list category-wise is maintained in MCD. He has also stated that "Safai-karamcharis" who joined in the employment of the MCD in the year 1994, 1995, 1996 and 1997 are still working with management. His statement also included that no charge-sheet was given to the respondent nor any enquiry was conducted against her. Mr. Surender Singh, MW2, who filed an affidavit in response to the affidavit filed by the respondent, in his oral testimony has stated that the workers named by the respondent were her co-workers. He also stated that no call letter was sent to the respondent to rejoin the duties.

18. It is clear from the testimony of the petitioner's witnesses that the petitioner has clearly deviated from the procedure provided in Section 25(G) of the Act when the respondent was terminated from her services while persons junior to her have been retained. It is further deposed by MW1 Mr. Arunesh Upadhyay that the name of the respondent was deleted from the attendance register in the month of November, 2000. Deleting the name of the respondent and retaining the juniors and co-workers would conclusively prove that there is a violation of Section 25(G) and (H) of the Act. This was also held by the learned Single Judge of this Court in W.P.(C) 6024/1999, The Management of MCD vs. Presiding Officer, Industrial Tribunal decided on August 25, 2011, wherein it was held as under:

In the present case, the MCD has not been able to produce evidence to show that while terminating services of the respondent workman it complied with the requirements of Section 25G ID Act. Mr. Rajiv Aggarwal, learned counsel for the

workman submitted that the workman is in dire need of employment and in such circumstances the award of compensation would not be an adequate remedy. Given the difficulty in obtaining employment, the submission on behalf of the workman appears to be justified. In a case like this, lumpsum compensation in lieu of reinstatement cannot be an adequate or satisfactory remedy for respondent No. 2 workman. The petitioner was working as a Carpenter at least on two occasions on daily wage basis. Therefore, it is not understood how in terms of the RRs the petitioner cannot work as such. In any event no such plea having been taken before the Tribunal, it cannot be permitted to be urged at this stage.

Thus, the answer to the first issue is that the petitioner has terminated the services of the respondent in violation of Section 25(G) of the Act and thus, the finding of the Tribunal to such an extent cannot be faulted.

19. Insofar as the second issue pertaining to the direction of the Tribunal for reinstatement of the respondent with 50% back wages is concerned, before I deal with the said submission, the settled principle of law is as under.

20. The Supreme Court in Harjinder Singh's case (supra) has referred to its earlier judgments in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, and Surya Dev Rai Vs. Ram Chander Rai and Others, , wherein the jurisdiction of this Court under Article 226 of the Constitution of India in issuing writ of certiorari was discussed. The Supreme Court reproduced the relevant paras from Syed Yakoob's case. The same are reproduced herein under:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned

finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* and *Kaushalya Devi v. Bachittar Singh*)

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

21. In the decision of *Harjinder Singh's* case (supra), an appeal was directed against order passed by the learned Single Judge of the Punjab and Haryana High Court in Writ Petition No. 372 of 2001 whereby he modified the award passed by the Labour Court, Gurdaspur and directed that in lieu of reinstatement with 50% back wages, the appellant herein shall be paid Rs. 87,582/- by way of

compensation. The Labour Court had held that even though the appellant was retrenched after complying with Section 25F of the Act, the principle of equality enshrined in Section 25G of the Act was violated and persons junior to the appellant were allowed to continue in service and directed reinstatement of the appellant with 50% back wages. Though the learned Single Judge agreed with the Labour Court that the action taken by the corporation was contrary to Section 25G of the Industrial Disputes Act, 1947, he however, did not approve the award of reinstatement on the premise that initial appointment of the appellant was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and, accordingly, substituted the award of reinstatement with 50% back wages by directing that the appellant shall be paid a sum of Rs. 87,582/- by way of compensation. It was held by the Court that the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution. It was further held that:

14. A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the. Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the appellant's service falls within the ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs. 87,582/- by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family.

15. Another serious error committed by the learned Single Judge is that he decided the writ petition by erroneously assuming that the appellant was a daily wage employee. This is *ex facie* contrary to the averments contained in the statement of claim filed by the workman that he was appointed in the scale of Rs. 350-525 and the orders dated 3.10.1986 and 25.2.1987 issued by the concerned Executive Engineer appointing the appellant as Work Munshi in the pay scale of Rs. 355-525 and then in the scale of Rs. 400-600. This was not even the case of the corporation that the appellant was employed on daily wages. It seems that attention of the learned Single Judge was not drawn to the relevant records, else he would not have passed the impugned order on a wholly unfounded assumption that the appellant was a daily wager.

16. It is true that in the writ petition filed by it, the corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in para 2 of the reply filed on behalf of the corporation to the statement of claim wherein it was admitted that the appellant was engaged as work charge Motor Mate for construction work on 5.3.1986 and he worked in that capacity and also as Work Munshi from 5.3.1986 to 3.10.1987 and, as mentioned above, even after expiry of the period of three months" specified in order dated 5.2.1987, the appellant continued to work till 5.7.1988 when first notice of retrenchment was issued by the Managing Director of the corporation. Therefore, it was not open for the corporation to contend that the appellant had not completed 240 days service. Moreover, it is settled law that for attracting the applicability of Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.

22. In the instant case the Industrial Tribunal, while passing the impugned award dated December 18, 2006, did not commit jurisdictional error. The impugned award is neither vitiated by any error of law apparent on the face of the record nor was it passed in violation of rules of natural justice. Thus, with regard to the second issue, it shall not be pertinent for this Court in its jurisdiction under Article 226 of the Constitution to interfere with impugned award of the Tribunal directing the petitioner to reinstate the respondent with 50% back wages. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in Jaipur Development Authority's case (*supra*) is concerned, the same would not be applicable in the facts of this case. This I say so for the reason that, the Supreme Court in the said case had come to a conclusion that when the services of the respondent in that case were terminated, no person junior to respondent in the same category had been retained. The fact that the services of the respondent were terminated as far back as 1987 also weighed with the Supreme Court. The Supreme Court also

held that the respondent had not regularly served the appellant and the job was not of perennial nature. In the present case, it is the conclusion of the Tribunal that persons junior to the respondent were retained by the petitioner/MCD. The job was of "Safai-karamchari" which is of perennial nature.

23. Insofar as, the other judgments so relied upon by the learned counsel for the petitioner, are primarily on the proposition of law that, the direction to reengage would become process of recruitment de hors the rules; temporary appointee has no right to the post; even if Court comes to a conclusion that termination is illegal, reinstatement with full back wages would not be the only relief that should be granted to the workman. The Supreme Court held that a compensation in lieu of reinstatement with back wages would also be an appropriate relief. The judgments so relied upon would not help the case of the petitioner. Moreover, it would be seen from the later part of this judgment, the respondent is not granted regularization.

24. Insofar as the third and the last issue pertaining to the direction of the Tribunal to consider the case of the respondent for regularization as "Safai-karamchari" as per the policy of regularization treating the seniority of the respondent w.e.f. June 14, 2004 is concerned, I may state here that the Supreme Court in Uma Devi's case (supra) held as under:

... 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.

25. The aforesaid shows the well settled position of law insofar as the issue of regularisation.

26. In view of the dicta of the Supreme Court in Uma Devi's case (supra) coupled with the fact that the petitioner has frozen the regularization of the daily wagers, the direction of the Tribunal would be unsustainable. In fact, the order sheets in the petition reveal that opportunities were given to the respondent to

file a response to the additional affidavit. The response having not been filed, the stand taken by the petitioner need to be accepted. This Court would relieve the petitioner from the obligation of the direction of the Tribunal to consider the case of the respondent for regularization in terms of the policy taking into consideration her seniority w.e.f. June 14, 2004 and accordingly, to that extent, the order of the Tribunal need to be set aside.

27. Accordingly, the writ petition is partially allowed upholding the award of the Industrial Tribunal in ID No. 116/2006 to the extent of direction of reinstatement with 50% back wages and setting aside the direction of the Industrial Tribunal, to consider the case of the respondent for regularization in terms of policy by taking into consideration her seniority with effect from June 14, 2004. No costs.