

(2006) 10 DEL CK 0128

In the Delhi High Court

Case No : Writ Petition (C) No. 15187 of 2006

Nand Lal

APPELLANT

Vs

Housing and Urban Development Corporation Ltd. (HUDCO)
and Another

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 22

Citation : (2006) 92 DRJ 552

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

Bench : Single Bench

Advocate : Sanjay Ghose, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 25.5.2006 passed by Labour Court No. II, Karkardooma Courts, Delhi whereby the claim of the petitioner that his disengagement amounted to illegal retrenchment was dismissed by the Labour Court without serving notice on the management.

2. The petitioner was employed by the respondent as a Data Entry Operator. His employment was on contractual basis on the consolidated amount of Rs. 2500/- p.m. He was engaged by the respondent at the request of the Ministry for deputing a person to Parliament Cell to do the work of data entry due to a conference "The Housing- Challenges and Solutions". This appointment was made on 27.5.1998 and the petitioner after appointment was deputed in the Ministry of Urban Affairs and Employment to do the work of data entry. The contractual appointment was initially for a period of six months and was extended from time to time. His last extension was w.e.f. 1.7.2003 for a period of six months. His appointment as a Data Entry Operator came to an end in December, 2003 and in December, 2003 he was given a contract assignment as a Helper (Data Entry). This assignment continued on contract basis on a

consolidated remuneration of Rs. 4500/- p.m. up to the first week of October, 2005 where after the contract was not renewed. The petitioner raised industrial dispute alleging that he has been illegally terminated.

3. The letter of appointment issued to the petitioner reads as follows:

F.5(194)/96-HRD May 28, 1999 Shri Nand Lal 380, Sector-II Type II, Sadiq Nagar New Delhi-110049 Sir,

We are pleased to offer you a contract assignment as Data Entry Operator for the period commencing from may 5, 1999 to July 31, 1999 in connection with work related to data entry jobs of temporary nature, on the following terms and conditions:

The other terms and conditions will be as follows:

- i. You will be paid a monthly consolidated remuneration of Rs. 2500/- (Rs. Two Hundred Five Hundred only) per month.
- ii. You will not be entitled to any other benefit and concessions during the period of this contract.
- iii. You will be expected to carry out all such duties as may be assigned by the Executive Director (Management Services), HUDCO.
- iv. Your assignment is purely on contract basis for the specific period indicated above and you will have no claim for any employment in this Corporation.
- v. HUDCO reserved that right to terminate the contract with or without any notice.

A copy of this letter duly signed in acceptance of the terms and conditions specified above, may be returned to the undersigned within 10 days of the receipt of this letter, failing which the letter shall be treated as withdrawn.

Thanking you,

3. The Tribunal held that the contract of employment was a temporary contract consciously entered into by the workman for a job of temporary nature. The termination of the workman on expiry of contract period did not give any right to the workman to claim reinstatement and dismissed the claim of petitioner without service of notice to him.

4. It is not disputed that services of petitioner were hired for specific purpose because of exigencies of work. He was hired on contract basis and it was made clear to him in the very beginning that he was being given a contractual employment for a specific period. The contract was renewed only till the period the work existed. Once the exigency was over and there was no further work, the contract was terminated. Such a termination is covered u/s 2(oo)(bb) of Industrial Disputes Act and does not amount to retrenchment.

5. In *Batala Cooperative Sugar Mills Ltd. Vs. Sowaran Singh*, Supreme Court observed that where a person is appointed on daily wages for a specific work and for a specific period, Section 22(oo)(bb) of I. D. Act was attracted and if after the specific work, the services are terminated, it is not a case of retrenchment. In *Punjab State Electricity Board Vs. Darbara Singh*, Board had appointed respondent as daily wage peon for a period of about two months with clear understanding that as and when regular employee joins, his services would be terminated. His period of appointment was extended from time to time and his services were terminated on appointment of regular peon. Supreme Court observed that it was a case covered u/s 2(oo)(bb) of the Industrial Disputes Act, despite the fact that his appointment was extended from time to time. In *Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal*, the workman was appointed as junior typist with effect from 12.7.1982 and he continued in the said post for more than one year and then another order was issued appointing him for 44 days with effect from 1.10.1983. On its expiry on 15.11.1983, another appointment was issued for a fixed period and in this way, he was allowed to work up to 3.5.1989 and thereafter his contract was not renewed. The Supreme Court upheld the order of High Court holding that it was a case covered u/s 2(oo)(bb) of Industrial Disputes Act. In *Municipal Council v. Raju* 2006 SCC 473, respondent was appointed as a typist on contract basis at Octroi Branch where permanent employees had gone on leave. The respondent gave an affidavit that his services may be dispensed with by the Municipal Council at any time. The respondent worked from 24.6.1994 to 2.3.1996 and 7.3.1997 to 21.5.1997 with the Corporation and thereafter his services were dispensed with. The question arose whether Section 2(oo)(bb) of the Industrial Disputes Act was applicable or not. Supreme Court observed that Section 2(oo)(bb) of ID Act was applicable even in such cases where the employment is taken by a person for a short limited period knowing fully well that he is liable to be terminated at any time. In *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, Karnataka, Supreme Court observed as under:

The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause(bb) subject to the following conditions being satisfied:

- (i) that the workman was employed in a project or scheme of temporary duration:
- (ii) he employment was on a contract, and not as a daily wage simpliciter, which provided inter alias that the employment shall come to an end on the expiry of the scheme or project:
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
- (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.(para 13)

6. All above conditions as laid down by the Supreme Court are fulfilled in this case. The letter of appointment categorically states the appointment to be for a specific purpose and limited period. The termination is, Therefore, covered u/s 2(oo)(bb).

7. The petitioner counsel has relied upon Haryana State Electronics Development Corporation Ltd. Vs. Mamni, and contended that where artificial break was given and a person was appointed repeatedly for short periods, Supreme Court held that the matter was not covered u/s 2(oo)(bb) of Industrial Dispute Act. The facts of the case cited by petitioner are altogether different from the facts of his case. In that case the workman was engaged for a period of Eighty Nine Days for four times with one or two days break and she raised an industrial dispute that her services were illegally terminated. Her appointment was not made for any specific purpose, she was given ad-hoc appointment on a temporary post. Supreme Court held that her appointment was not contractual appointment u/s 2(oo)(bb). In the present case, the petitioner has relied upon the contract of appointment which was entered into by him. The contractual appointment of the petitioner is an undisputed fact. The contract was renewed from time to time because the work for which the petitioner was engaged was not completed. Once the work was completed the petitioner's contract was not renewed. In the contract itself, it was made clear by the respondent that his services were being engaged only for a specific work, temporarily and once the work was over his services would be disengaged. The petitioner's case is not covered by the above judgment of Supreme Court but is squarely covered by the judgments cited in para 5 above.

8. I consider that there is no perversity in the award passed by the Labour Court. I find no force in the writ petition and the writ petition is hereby dismissed.