
(2008) 02 DEL CK 0058

In the Delhi High Court

Case No : LPA 59 of 2008

P.K. Sharma

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 102 DRJ 740 : (2008) 11 ILR Delhi 9

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrpal, J

Bench : Division Bench

Advocate : D.N. Goburdhan, for the Appellant; P.L. Gautam, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 30th November, 2007 dismissing the writ petition filed by the appellant. The writ petition was filed by the appellant impugning the award dated 11th October, 2006 passed by the Presiding Officer, Industrial Tribunal No. 1, Karkardooma Courts in ID case No. 40/2006.

2. The appellant was appointed as a Data Entry Operator on ad hoc basis by the respondent under order dated 26th March, 2001. The counsel for the appellant has drawn our attention to the said appointment order. He states that although the appellant was appointed on ad hoc basis, he continued to work till 2004 and on one fine morning he was told that his services stand terminated without issuing any written orders.

3. Since according to the appellant the aforesaid action of the respondent amounted to unjustified and illegal termination, Therefore, he sought for a reference, which was accepted by the appropriate Government and on the basis of his request, the following issue was referred to the Industrial Tribunal:

Whether services of Sh. P.K. Sharma, s/o Sh. C.B. Sharma, have been terminated by the management illegally and/or unjustifiably, and if so, to what

sum of money as monetary relief along with consequential benefits in terms of existing laws/government notifications and to what other relief is he entitled and what directions are necessary in this respect?

Whether Sh. P.K. Sharma, s/o Sh. C.B. Sharma, is entitled to be regularized in the service of the post of Data Entry Operator from the initial date of his appointment i.e. from 27.03.2001 with all consequential benefits. If so, what directions are necessary in this respect?

4. The Tribunal on receipt of the aforesaid reference received evidence adduced by the parties and on appreciation thereof and upon hearing the counsel appearing for the parties passed an award on 11th October, 2006 holding that the case of the appellant squarely falls within the parameters of the provisions of Section 2(oo)(bb) of the Industrial Disputes Act and, Therefore, the disengagement of the appellant would not be termed illegal retrenchment. It was also recorded in the award passed by the Industrial Adjudicator that the appellant was appointed in the capacity of Data Entry Operator on ad hoc basis. It was also held that since there were no Recruitment Rules, Therefore, the respondent was not under any obligation to regularise the services of the appellant.

5. Being aggrieved by the aforesaid findings recorded by the Industrial Adjudicator, the aforesaid writ petition was filed, which was considered in depth by the learned Single Judge and the same was dismissed by the impugned judgment and order, which is under challenge in this appeal, on which we have heard learned Counsel appearing for the appellant as also the counsel appearing for the respondent.

6. The order of appointment dated 26th March, 2001 clearly indicates that the appellant was engaged to work against the post of Data Entry Operator on ad hoc basis. Records were placed before the learned Single Judge by the respondent to show that the services of the appellant were availed by the respondent during the period 1994 - 2002 for the project, namely, "India Population Project-VIII". There is an office order dated 14th May, 2007, which reiterates the said position and it contains the names of all the persons, who were so engaged. One of the names is that of the appellant. Besides the appellant, the other persons whose names also appear, were recruited as Data Entry Operators by the respondent on contractual basis for completion of the said project, which is said to have been funded by the World Bank. The learned Single Judge has extracted the contents of the said office order, which appears at page 52 of the writ petition, to the following effect:

MUNICIPAL CORPORATION OF DELHI

OFFICE OF THE PROJECT DIRECTor IPP-VII

16, Rajpur Road,

IVth Floor Rear building,

Civil Line Zone, Delhi - 110054

No. PD/IPP-VII/2007/201

Dated:14.5.07.

Subject: Clarification in r/o the Data Entry Operators working in IPP-VII

In reference to letter No. Tax/HQ/Admn./Court Cases/P.K. Sharma/2007/58 dated 09.05.07 regarding the subject.

In this connection it is submitted that during the Project period of 1994-2002 of India Population Project-VIII, World Bank Aided Project recruitment of following Data Entry Operators (DEOs) were made the details which is as below:

-- S. Name of Father's Date of Working Pay Salary Remarks No. DEO Name
Appointment on scale Drawn regular/ Adhoc contract basic -----
----- 1 Sh. S/o Sh.
24.06. 1996 Regular 4000 Regular Presently Sandeep Satbir on adhoc 100
salary work in Kumar Singh date of 6000 the office regulation of Addl.
12-09-2002 Cm. (H) since 01. 092001 in diverted capacity. -----
----- 2. Ms. Ritu D/o
Sh. 11/11/97 Contract 5000- Rs. 8000/- Makhija M.K.. 100- p.m. Makhija 8000
consolidated -----
----- 3. Sh. S/o S.K. 27.07.1998 Contract 4000- Rs.6000/- Sandeep
Bhatia 100- p.m. Bhatia 6000 consolidated -----
----- 4. Sh. S/o R.S. 10.11.1997
Contract 4000- Rs.6000/- Deepak Verma 100- p.m. Kumar 6000 consolidated --

5. Sh. Santosh S/o Late 24.07.1998 Contract 4000- Rs. 6000 Kr. Jha Sh. 100-
p.m. Yogendra 6000 consolidated Jha -----

7. The aforesaid document placed on record clearly indicates that not only the appellant was appointed on ad hoc basis, but the said appointment was only for a specific project. In this connection the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 are relevant wherein it is stated that the disengagement from services of a person as mentioned in the said provision amounts to termination of services.

8. Considering the facts and circumstances of the case, it is clearly established that the alleged termination of the appellant was also outside the purview of the term "retrenchment". The aforesaid conclusion was also arrived at by the learned Single Judge after referring to the various decisions of the Supreme Court, namely, State of Himachal Pradesh Vs. Suresh Kumar Verma and another, and Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., , besides Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In para 54 of the said decision, it is held thus:

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

9. In that view of the matter and looking at the nature of appointment of the appellant, we are of the considered opinion that the provisions of Section 25(F) of the Industrial Disputes Act are not applicable to the facts and circumstances of the present case as disengagement of the appellant was a case which is fully covered by the provisions of clause (bb) to Section 2(oo) of the Industrial Disputes Act. We find no merit in this appeal, which is dismissed.