

(2006) 10 DEL CK 0069
In the Delhi High Court
Case No : Writ Petition (C) 3007 of 2003

University of Delhi

APPELLANT

Vs

Shri Sushil Kumar and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2006) 92 DRJ 397

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

Bench : Single Bench

Advocate : S.K. Luthra and Pankaj Aggarwal, for the Appellant; Pragnya, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This writ petition is directed against the Award dated 19.4.2002 passed by Labour Court No. III, Karkardoom Courts, Delhi, whereby it held that the respondent was entitled to be reinstated in service with full back wages and continuity in service.

2. Briefly facts relevant for the purpose of deciding this writ petition are that respondent raised an industrial dispute alleging that he was illegally terminated by the petitioner on 16.4.99. The dispute was referred for adjudication to the Labour Court in the following terms:

Whether the services of Sh. Sushil Kumar have been terminated illegally and/or unjustifiably by the Management and if so, to what relief is he entitled and what is he entitled and what directions are necessary in this respect ?

3. In the statement of claim filed by the respondent before the Conciliation officer, respondent took the stand that he was employed by the petitioner as peon with effect from 15.1.1996 and was lastly posted at Campus Law Centre, Faculty of Law, Delhi University. He was a muster roll employee and was being paid wages fixed and revised from time to time on monthly basis. He was not

given any appointment letter and his services were terminated with effect from 16.4.1999 without any valid reason. The petitioner in the written statement denied allegations made by the respondent and stated that respondent was never appointed as a peon. He was kept against a vacancy of seasonal staff for re-arranging, cleaning and stacking of books in the Law Library of the Faculty of Law. He was engaged only during examination days and he worked with the University up to 15.5.1999 and thereafter he was not engaged. He was not selected by the Selection Committee and he was not regular employee of the University. He had no right of becoming a permanent employee of the University. The claim of the respondent for reinstatement with full back wages was denied. Petitioner also took the stand that Delhi University was not an industry. In rejoinder the claimant did not deny that he had worked up to 15.5.1999. He also did not deny that he was engaged on seasonal basis for re-arranging, cleaning and stacking of books in the Law Library of the Faculty of Law.

4. In the statement of claim before the Tribunal the respondent again took the stand that he was terminated from service on 16.4.1999. He had been working with the University from 15.1.1996. The stand of the petitioner i.e. Delhi University was that the respondent was engaged as a daily wager from 3.3.1997 to 12.8.1997 for specific purpose. He was again engaged as daily wager on ad hoc basis from 16.6.1998. The engagement was done purely on casual basis for examination, being a seasonal engagement, as an unskilled labourer to meet the seasonal requirement of examination. It is stated that faculty of law had semester system and needed casual labour during examination. The respondent was engaged during examination only up to 15.5.1999 intermittently with long breaks. He was not appointed on any post neither was he appointed on 15.1.1996 as a peon.

5. The Tribunal framed the following issues:

1. Whether workman was appointed for a fixed period due to exigencies of work and if so, to what effect ?

2. As per terms of reference ?

3. Relief.

6. Petitioner produced last muster roll of the respondent employee and two payment vouchers of the payments made to the respondent during April- May 1999 duly signed by the workman. These documents were not contested or denied by the workman and neither Tribunal disbelieved the authenticity of these documents, as is apparent from the Tribunal order holding that the respondent was entitled to back wages from 15.5.1999.

7. The Tribunal passed award contrary to the evidence oral & documentary placed on record. Respondent had taken the stand that his services were terminated on 16.4.1999 whereas petitioner proved the vouchers showing payment made to him for work up to 15.5.1999. Evidence also showed that

respondent had not come before the Tribunal or Conciliation Officer with clean hands.

8. The sole reason for passing Award in favor of respondent by Tribunal is the adverse inference drawn by it. The Tribunal observed that although the management had denied that workman worked with the management continuously from 1.12.1997 to May 1999 yet the management did not produce attendance register of the workman. This establishes that the workman worked continuously with the management from 15.1.1996 to 16.4.1999. It is apparent that Tribunal misdirected itself by putting onus of proving 240 days work by workman on the management.

9. The conclusion of the Tribunal even on evidence is perverse and perversity is reflected in the order itself. The contention of the respondent was that he had worked from 15.1.1996 to 16.4.1999, while suggestion being given to the witness of the petitioner was that he worked from 1.12.1997 to May 1999. The payment vouchers reflected that he worked for few days in April 1999 and few days in May 1999. The Tribunal totally ignored the payment vouchers proved by the petitioner on record.

10 Exhibit MW 1/2 is the payment voucher in respect of work done by the respondent in the month of April 1999 which shows that the respondent had worked for 12 days in the month of April and received a sum of Rs. 894/- @ Rs. 74.50 per day. Similarly Ex. MW 1/3 shows that respondent had worked for 13 days in May 1999 and received a sum of Rs. 968.50 for these 13 days. Muster roll Ex. MW 1/1 also shows that respondent worked for 12 days only in the month of April 1999. MW 1 in his testimony stated that respondent was engaged on contractual basis from 3.3.1997 to 12.8.1997 and then from 16.6.98 for two months and then he worked in April and May 1999 on daily wages. There is no cross examination on this testimony and still the Tribunal ignored the testimony of MW 1 altogether.

11. It is settled law that an award which is based on no evidence or is contrary to evidence on record is a perverse award and can be set aside in exercise of power of judicial review. It is, obvious from record, that Tribunal misdirected itself and did not take into account the documents produced by the petitioner and the evidence of the petitioner and passed order on conjecture and surmises. It wrongly put onus on petitioner as already discussed.

12. Delhi University is a Central University and all its employees are appointed as per recruitment rules and regulations. No employee can be appointed without following recruitment procedure. It is a settled law that government department and its instrumentalities have a right to appoint casual and daily wager employee for emergent needs. In Delhi University examinations are conducted every semester/year and at the time of conducting examination additional hands are required to meet additional work requirement. There is no bar on recruitment of daily wager for this additional work which arises seasonally. The daily wagers are

casual employees who are appointed to do the additional work during examination and do not gain any legal right over any post and they can be disengaged after the work is over. Supreme Court in 2006 (4) SCA 197 Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. held that in public appointment, the rule of equality has to be followed, this being the basic feature of the Constitution. The contractual appointments made on ad hoc, casual, daily wages basis de hors the rules should come to an end when work is over and such appointments create no right or claim to be made permanent on expiry of the term of appointment or on being disengaged when season is over. Supreme Court also held that it would not be unjust to discontinue a person who has worked for some time with the State since such a person was always aware of the temporary/casual nature of his employment when he first took it and merely because a person has continued for some time, would not enable him to jettison the procedure established by law for public employment.

13. It is settled law that a person who claims to be workman and claims relief on the basis of Section 2(oo) and 25(F) of Industrial Disputes Act has to prove that he worked for 240 days. No adverse inference can be drawn in all cases on non production of muster roll or attendance register. In this case the respondent received salary by way of voucher and executing receipt. He had with him all documents of the period for which he worked, but he deliberately did not place on record the documents pertaining to his salary showing the periods for which he worked. In fact adverse inference should have been drawn against the respondent and not against the Delhi University. Delhi University did place on record the two payment vouchers and one month's muster roll which was ignored by the Tribunal while passing award. The Tribunal wrongly put onus on petitioner to prove that respondent had not worked for 240 days continuously and then Tribunal ignored the evidence of the University produced on the record and gave conclusion on conjecture and surmises.

14. I hold that the Award dated 19.4.2002 passed by Labour Court No. III, Karkardoom Courts, Delhi is perverse & contrary to law, same is hereby set aside. The writ petition is allowed.