

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No.13143/2005**
% **Date of Decision: 07th JANUARY, 2010**
NEW DELHI MUNICIPAL COUNCILPETITIONER
! Through: Mr. P.C. Sen, Advocate.
VERSUS
\$ SHRI DORI LALRESPONDENT
^ Through: Mr. K. Venkatraman, Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The NDMC is the petitioner in this writ petition. It has filed the present petition for setting aside the industrial award dated 21.05.2004 in I.D. No. 139/1995 granting full back wages from the date of termination till the date of the award in favour of the respondent workman.

2 Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner had on or around 1991 had restarted its training-cum-production centre for manufacturing of file covers, wrappers and file boards at Bapu Samaj Sewa Kendra, Community Hall, Panchkuyian Road, New Delhi for which decision was taken by the petitioner vide Resolution No. 32 dated 28.09.1990. The scheme was started at the petitioner's above referred Kendra with an object of giving

training to the un-employed lower categories and to supply the maximum production of file covers & wrappers for the municipality.

3 Pursuant to decision taken by the petitioner to restart its training-cum-production centre for manufacturing of file covers, wrappers and file boards vide Resolution No. 32 dated 28.09.1990, the petitioner appointed two persons namely the respondent Mr. Dori Lal as Supervisor and Mr Raj Kumar as helper w.e.f. 01.04.1991 and 15.04.1991 respectively at a fixed honorarium of Rs.1,000/- per month and Rs.750/- per month respectively for a period of three months in the first instance. The honorarium of both these persons, at their request, was later on enhanced to Rs.1,200/- per month and Rs.1,000/- per month respectively w.e.f. 19.04.1993. The tenure of appointment of both the above persons at the Centre was renewed from time to time, each time for a fixed term ranging between three to six months till the time the Centre was finally closed down by the petitioner w.e.f. 31.03.1994. The last extension that was given by the petitioner to the respondent Mr. Dori Lal was vide appointment letter dated 20.10.1993 (Annexure MW-1/7 at page 23 of the paper book) which is extracted below:-

*"BAPU SAMAJ SEWA KENDRA
COMMUNITY HALL, P.K. ROAD,
NEW DELHI*

No.197-A/CH/69-A/CH

Dated 20.10.1993

OFFICE ORDER

In continuation of O.O. No.197-A/CH/42/CH dated 17.06.1993 and with the approval of the Secretary, the term of temporary posts of one supervisor and one Helper for File cover production, Cummunity Hall, P.K. Road, New Delhi is extended for another period of six months w.e.f. 01.10.1993 to 31.03.1994. The term of appointment of the following officials is also extended for the period ending 31.03.1994. Further the rate of fixed honorarium to the following is as under:-

| <i>Sl. No.</i> | <i>Name and Designation</i> | <i>Rate of fixed honorarium</i> |
|----------------|-----------------------------|-------------------------------------|
| 1 | Sh. Dori Lal, Supervisor | Rs.1,200/- p.m. |
| 2 | Sh. Diwakar Garg, Helper | Rs.750/- p.m. |

The appointments are purely temporary and can be terminated earlier also.

*Sd/-
DY. SECY. (HEALTH)*

Copy to :-

1. *Incharge (Community Hall)*
2. *Accounts Branch*
3. *Individual"*

4 The Centre for which the respondent was appointed by the petitioner was closed down w.e.f. 31.03.1994 and consequently the services of the respondent workman came to an end with the closure of the Centre w.e.f. 31.03.1994. Aggrieved therefore, the respondent workman raised an industrial dispute which was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication.

5 The Labour Court vide its impugned award, upon consideration of the evidence produced by the parties before it, recorded a finding of fact that admittedly the Centre for which the respondent workman was appointed had been closed down w.e.f. 31.03.1994. Para-10 of the impugned award in this regard is relevant and is extracted below:-

"In my considered view, when the workman has continuously worked w.e.f. 01.04.1991 to 31.03.1994, he is entitled to get protection of Section 25-F of the I.D. Act and his services should not have been terminated without complying with the provisions of the Act. The plea of the management that the unit in which the workman was employed has been closed stands un rebutted, as in the rejoinder the workman has not disputed this."

6 Though the Labour Court has returned a finding of fact that the Centre for which the respondent workman was appointed had been closed down w.e.f. the date of his termination i.e. 31.03.1994, the Court below has granted full back wages to the respondent workman from the

date of his termination till the date of award. It is aggrieved from this relief given by the court below to the respondent workman, the petitioner has filed the present writ petition seeking setting aside of the impugned award.

7 Mr. K. Venkatraman learned counsel appearing on behalf of the respondent workman has argued that since the respondent was appointed by the petitioner in a temporary capacity and according to him, in view of provisions contained in Section 25-F of the Industrial Disputes Act, 1947, even a temporary workman is entitled to have a notice of one month for termination of his services. The argument of Mr. Venkatraman is that since the services of the respondent workman were terminated by the petitioner w.e.f. 31.03.1994 without serving him any notice of termination, the termination is bad in law and, therefore, the Labour Court has rightly awarded full back wages to the respondent workman from the date of termination till the date of award.

8 Per contra, Mr. P.C. Sen learned counsel appearing on behalf of the petitioner has argued that the appointment of the respondent workman was a tenure appointment and came to an end with the expiry of the term for which he was appointed. He has referred and relied upon the appointment letters issued by the petitioner to the respondent workman from time to time, specimen copies whereof are at pages 16 to 23A of the paper book to show that the appointment of the respondent workman was for a fixed term and had a fixed honorarium. Mr. Sen has relied upon the provisions contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947 to contend that no notice for termination of services of the respondent workman was required to be given as his term of appointment had come to an end on the date the Centre for which he was appointed was closed. Section 2(oo)(bb) of the Industrial Disputes

Act, 1947 reads as under:-

“Section 2(oo)(bb):-

'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a)XXXX

(b)XXXX

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or}

(c) XXXX”

9 It is apparent on a plain reading of the provisions contained in Section 2(oo)(bb) of the Act extracted above that no notice was required to be given by the petitioner to the respondent workman for termination of his services on the closure of its Centre as the term for which he was appointed had come to an end on that day. The terms of appointment contained in the appointment letter Ex. MW-1/7 clearly put the respondent workman to a notice that his contract of employment with the petitioner would come to an end on 31.03.1994 and therefore, he was not entitled to any further notice from the petitioner in this regard. The non-renewal of tenure employment of the respondent workman by the petitioner corporation does not fall within the ambit of 'retrenchment' provided in Section 2(oo) of the Industrial Disputes Act, 1947. There is a categorical finding in the impugned award which has not been challenged by the respondent workman that the Centre for which he was appointed was closed down w.e.f. the date of his termination i.e. 31.03.1994. In that view of the matter, this Court is of the opinion that the court below has committed a grave error in granting back wages from the date of termination of the respondent till the date of award in favour of the

respondent workman. The award to that extent suffers from perversity and is liable to be set aside.

10 In view of the foregoing, the impugned award to the extent it grants full back wages from the date of termination till the date of award in favour of the respondent workman is concerned, is hereby set aside. This writ petition is allowed leaving the parties to bear their own costs.

JANUARY 07, 2010
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S.N.AGGARWAL, J