* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **W.P.(C) 5116/2019**

NORTH DELHI MUNICIPAL CORPORATION .....Petitioner

Through: Ms. Namrata Mukim, Standing Counsel MCD and Ms. Niharika Singh for MCD

versus

SHRI DARSHAN SINGH .....Respondent

Through: Mr. Jawahar Raja, Mr. Siddharth Sapra and Ms. Meghna De, Advocates

\+ **W.P.(C) 1726/2022**

SHRI DARSHAN SINGH .....Petitioner

Through: Mr. Jawahar Raja, Mr. Siddharth Sapra and Ms. Meghna De, Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION THROUGH ITS COMMISSIONER .....Respondent

Through: Ms. Namrata Mukim, Standing Counsel MCD and Ms. Niharika Singh for MCD

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petitions have been preferred by the parties seeking setting aside of the award dated 05.04.2018 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No. 01, Dwarka Court Complex, Dwarka, Delhi (hereinafter referred to as the "Tribunal") in ID No. 12/2013. Both the parties concerned, the MCD as well as the claimant, have approached this Court vide the present petitions. While the claimant, *Darshan Singh*, is seeking setting aside of the award and praying for his reinstatement with back wages, the MCD is seeking setting aside of the order since it has been directed to provide retrenchment compensation of Rs.1 lakh to the claimant. As the parties are common and common submissions have been addressed in both the petitions, the same are taken up and disposed of *vide* a common judgment. In the impugned award, the Tribunal, while holding the claimant/*Darshan Singh*'s termination without issuance of notice or conduction of any inquiry to be illegal, has directed the MCD to pay retrenchment compensation of Rs.1 lakh to the claimant, but denied the claimant's prayer for reinstatement with back wages.

2. Briefly put, in his claim application, *Darshan Singh* claimed that he was appointed on 07.04.2005 as a *Safai Karamchari* on a regular basis on compassionate grounds as his mother, who was working with the management as a *Safai Karamchari* had died while in service. On 10.07.2008, he went to *Gomukh* for taking *"Kanwar"* and could not return home. His wife lodged a missing person report on 02.09.2008. He returned home in the first week of May 2011, remained under depression, and was diagnosed as suffering from anxiety neurosis. The claim application was

duly accompanied by a medical certificate. Apparently, in between, a public interest litigation came to be preferred by one Jagrook Welfare Society (Regd.), raising the issue that the management had paid salaries to 2000 persons who were never in employment of the MCD. The said writ petition, *Jagrook Welfare Society (Regd.) Vs. Govt. of NCT of Delhi & Ors.*[1], came to be listed on 26.05.2010. The Division Bench of this Court noted that 2503 employees were registered without biometric ID number. A circular dated 24.05.2010 was issued that no salary be paid to anyone whose name does not appear on the bio-metric attendance record. The Court noted that MCD was going to issue show-cause notices to all the 2503 employees to show cause finally, as to whether their names figure on the bio-metric attendance system or not and if not, proceedings would be initiated for termination of their services.

3. Insofar as the claimant/*Darshan Singh* is concerned, his termination was recommended on 04.01.2012 and termination order was passed on 05.01.2012 by noting that he had remained absent from his duties from 08.07.2008 without any prior information/permission of the competent authority. On account of claimant's non-joining of his duties, the authority found it not reasonable and practical to give any further opportunity of being heard to the claimant and terminated his services as provided under Section 95(2)(b) of the DMC Act.

4. Learned counsel for the management/MCD contended that the learned Tribunal erred in directing payment of retrenchment compensation as it failed to consider that the workmen had remained absent without

[1] **W.P.(C) 854/2010**

notice/permission for a period of three years and as such was not required to be given show cause notice and an opportunity of being heard.

5. It is further submitted that an appointment on compassionate grounds has its own limitations as it is an exception to the mode of regular appointment. The contractual appointment came to an end. When a workman's engagement is on daily wages, the same would come to an end when it is discontinued. If 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 appointments. On the strength of above, learned counsel prays that besides setting aside the impugned order, the claimant's prayer for reinstatement also be dismissed.

6. Learned counsel for the workman/claimant contends that the Tribunal, having come to a conclusion that the workman's termination was illegal, ought to have granted relief of reinstatement with back wages instead of granting only retrenchment compensation.

7. As per the admitted case of the parties, the workman was engaged as a *Safai Karamchari* on a regular basis and remained an employee from 07.04.2005 to 08.07.2008, whereafter he remained absent for a period of three years till 06.06.2011, and his biometrics could not be created.

8. The Division Bench of this Court in *Jagrook Welfare* (*supra*) categorically noted the stand of the management that it would issue show cause notice to 2503 employees of which the claimant/workman is one. Besides the above, Section 25F of the Industrial Disputes Act, 1947 ("ID Act") requires issuance of notice prior to retrenchment. The same reads as

under:

> *"**25F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*
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> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
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> *[* * *] [Proviso omitted by Act 49 of 1984, Section 32 (w.e.f. 18.8.1984).]*
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> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] [Substituted by Act 36 of 1964, Section 14, for " for every completed year of service" (w.e.f. 19.12.1964).] or any part thereof in excess of six months; and*
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> *(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.] [Inserted by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).]*

9. The conceded case of the management is that the termination order was passed without issuance of notice and without giving the claimant any opportunity of being heard. The same is apparent from a reading of the termination order dated 05.01.2012. Thus, the termination order is not only in the teeth of Section 25F of the ID Act but also stand taken before the Division Bench in *Jagrook Welfare* (*supra*). Though the learned counsel for the workman stated that the employee remained absent, recourse was taken to Section 95(2)(b) of the DMC Act. If the impugned order of termination is by way of penalty, then the same has been passed without holding any departmental inquiry. At this juncture, this Court takes note of the decision

in *MCD Vs. Praveen Kumar Jain & Ors.*[2], wherein the Court was in seisin of the facts where the services of an employee of the MCD were terminated. In the said case also, the termination was effected without complying with the pre-requisite under Section 25F of the ID Act and without holding any departmental inquiry; the Court held as under:

> *"4. We have heard learned counsel for the appellant as well as learned counsel for Respondent 1. In our view, an impossible situation has been created for the appellant. Learned counsel for the appellant was right when he contended that in the statement of Respondent 1 recorded in the preliminary enquiry he had clearly admitted that he had typed only seven names of persons eligible for being regularised and the additional two names of Mahender Kumar and himself were not typed by him. This showed that Mahender Kumar had got these two names inserted and if the benefit of the name of Respondent 1 was to accrue on account of such interpolation, on broad probabilities Respondent 1 could be said to have colluded with Mahender Kumar and got his name inserted through his agency at least and therefore for such misconduct he was required to be suitably dealt with. Unfortunately, for the appellant the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of Respondent 1 by way of a simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of penalty. This stand was obviously taken by the appellant because the order of simpliciter termination would have remained stillborn as Section 25F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that it was by way of penalty. If it was by way of penalty then at least a regular departmental enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against Respondent 1 and its acceptance by the disciplinary authority. Nothing of this son was done. There is neither the enquiry officer's report holding Respondent 1 guilty of charge which in fact was never framed against him nor is there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held Respondent 1 guilty of any charge of misconduct. It is also interesting to note that while challenging the award of the Labour Court in writ petition the appellant*

[2] (1998) 9 SCC 468

clearly stated in para 3 of the writ petition that since Respondent 1 and Shri Mahender Kumar were merely on casual engagement/muster-roll employees and were not regular employees of the petitioner-Corporation or that of DDA, they were not entitled to a departmental inquiry as is required for the regular employees of the petitioner-Corporation. As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental enquiry against Respondent 1. Consequently, the impugned order of termination would fail even on that ground. If it is a simpliciter discharge order it is violative of Section 25F of the Industrial Disputes Act and if it is a penalty order, as contended by the appellant, it would fail on merits as not having followed the procedure of departmental enquiry. In either view of the matter, the impugned order must be held to be rightly set aside by the Labour Court and the said decision was also rightly confirmed by the High Court."

10. In light of the fact situation of the present case and the decision of the Supreme Court in *Praveen Kumar Jain* (*supra*), this Court has no hesitation in holding that the impugned order of termination was rightly set aside by the Tribunal.

11. The workman/claimant had further claimed that he was not gainfully employed after his termination, and no evidence to the contrary was brought on record by the MCD.

12. In view of the conclusion reached by the Tribunal, it posed to itself a question as to whether it should grant relief of reinstatement with full back wages. The aforesaid question has also come up for consideration before the Supreme Court in *Bharat Sanchar Nigam Limited Vs. Bhurumal*[3], wherein the Court expounded the law after taking note of its previous decisions and held that though ordinarily relief of reinstatement with full back wages is allowed, it always remains open to the management to terminate the services of a daily wage worker. Even after he is reinstated, he has no right to seek

[3] (2014) 7 SCC 177

regularization. The relevant extract is as under:

> *"30. In this judgment of Shankar Shetty [(2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733] , this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)*
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> *'2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the ID Act')? The course of the decisions of this Court in recent years has been uniform on the above question.*
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> *3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] and stated as follows: (Jagbir Singh case [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , SCC pp. 330 & 335, paras 7 & 14)*
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> *'7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*
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> *****
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> *14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be*

set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily-wager who does not hold a post and a permanent employee.'

4. Jagbir Singh [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , wherein this Court stated: (SCC p. 777, para 11)

'11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.'"

31. In Deptt. of Telecommunications v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] and State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this Court to Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] and Metropolitan Transport Corpn. v. V. Venkatesan [(2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] .

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases

reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

13. In the present case also, the workman was engaged as a daily wager and there is every possibility that even if he is directed to be reinstated, the management can still do away with his services by filing procedure under Section 25F of the ID Act. The case of the workman does not fall under the exceptions noted in *Bhurumal* (*supra*).

14. Being guided by the aforesaid, this Court is of the considered view that the relief of retrenchment compensation awarded by the Tribunal is just and proper. Finding no merit in the petitions, both petitions are dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 20, 2026
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