

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

::::

ORDER

- (1) S.B. CIVIL WRIT PETITION NO.4625/2003
(Pradeep Kumar Vs. Labour Court & Anr.)**
- (2) S.B. CIVIL WRIT PETITION NO.4626/2003
(Smt. Asha Vs. Labour Court & Anr.)**
- (3) S.B. CIVIL WRIT PETITION NO.4627/2003
(Smt. Sugani Vs. Labour Court & Anr.)**
- (4) S.B. CIVIL WRIT PETITION NO.4628/2003
(Smt. Tara Devi Vs. Labour Court & Anr.)**
- (5) S.B. CIVIL WRIT PETITION NO.4629/2003
(Smt. Santosh Vs. Labour Court & Anr.)**
- (6) S.B. CIVIL WRIT PETITION NO.4630/2003
(Smt. Rekha Vs. Labour Court & Anr.)**
- (7) S.B. CIVIL WRIT PETITION NO.4631/2003
(Smt. Lali Vs. Labour Court & Anr.)**

**WRIT PETITIONS UNDER ARTICLE 226
AND 227 OF THE CONSTITUTION OF
INDIA.**

DATE OF ORDER :: 22nd December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Vijay Mehta, Advocate for the petitioners.
Mr.Rameshwar Dave, Dy. Govt. Advocate for the State.

BY THE COURT

In all the aforesaid writ petitions, challenge has been made to the award passed by the learned Labour Court, Jodhur passed on 03rd July, 2003. The appropriate government in these cases made reference to the learned labour court by notifications of various dates on the industrial dispute whether removal of the respondents-workmen was proper and valid and if not what relief they were entitled to.

In the terms of reference, date of such removal of the petitioner Pradeep was indicated as 01st August, 1998, Smt. Asha dated 02nd July, 1998, Smt. Sugani dated 01st July, 1998, Smt. Tara Devi dated 01st July, 1998, Smt. Santosh dated 02nd July, 1998, Smt. Rekha dated 02nd July, 1998 and Smt. Lali dated 02nd July, 1998.

In writ petition No.4625/2003, the date of removal of the petitioner Pradeep Kumar in terms of reference was indicated as 01st August, 1998. He set up a claim before the learned labour court that he was engaged as Sweeper by the

respondents on 01st April, 1997 and worked with them continuously up to 31st July, 1998. According to him, the respondents did not make compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') while terminating his services. He worked with the respondents though on monthly contract basis which was extended up to July, 1998.

In writ petition No.4626/2003, the date of removal of the petitioner Smt. Asha in terms of reference was indicated as 02nd July, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 04th April, 1997 and worked with them continuously up to 02nd July, 1998. Her services were terminated on 03th July, 1998 but without complying with Section 25-F of the Act.

In writ petition No.4627/2003, the date of removal of petitioner – Smt. Sugani in the terms of reference was indicated as 01st July, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 01st June, 1997 and worked with them

continuously up to 30th June, 1998. Her services were terminated without complying with Section 25-F of the Act.

In writ petition No.4628/2003, the date of removal of the petitioner – Sm.t Tara in terms of reference was indicated as 14t April, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 01st June, 1997 and worked with them continuously up to 30th June, 1998. Her services were terminated on 01st July, 1998 without making compliance of Section 25 F of the Act.

In writ petition No.4629/2003, the date of removal of the petitioner – Smt. Santosh in the terms of reference was indicated as 03rd July, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 04th April, 1997 and worked with them continuously up to 02nd July, 1998. Her services were terminated on 03th July, 1998 without complying with Section 25-F of the Act.

In writ petition No.4630/2003, the date of removal of the petitioner – Smt. Rekha in the terms of reference was indicated as 03rd July, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 04th April, 1997 and worked with them continuously up to 02nd July, 1998. Her services were terminated on 03th July, 1998 without complying with Section 25-F of the Act.

In writ petition No.4631/2003, the date of removal of the petitioner – Smt. Lali in terms of reference was indicated as 03rd July, 1998. She set up a claim before the learned labour court that she was engaged as Sweeper by the respondents on 04th April, 1997 and worked with them continuously up to 02nd July, 1998. Her services were terminated on 03th July, 1998 without complying with Section 25-F of the Act.

Learned counsel for the petitioners in assailing the validity of the award passed by the learned labour court has argued that the learned labour court has committed error in holding that the appointments of the petitioners were made for

fixed terms and which having expired, they would not be entitled to any relief. According to him, heavy burden lay upon the respondents to prove that the appointments were made on contract basis and for a fixed term. The respondents neither produced the copy of the contract nor did they produced any order of renewal of the contract. They could not also prove the fact as to what was the fixed term up to which the appointments were made. The learned labour court further committed an error apparent on the face of record by not drawing an adverse inference against the respondents for not producing contract on fixed term employment which has to be proved to exist in writing. The learned labour court failed to appreciate that contract appointments can be made only for a specific work under a project whereas the work for which the petitioners were engaged was of regular nature as the sanitation of the city was a permanent necessity. Provision of Section 2 (oo)(bb) of the Industrial Disputes Act would not be attracted in such a case. The learned labour court failed to appropriate that the respondents failed to comply with Section 25-F of the Industrial Disputes Act at the time of retrenchment

of the petitioners. They did not prepare any seniority list of the sweepers while terminating the services of the petitioners thereby violating Section 25-G of the Act and Rule 77 of the Industrial Disputes (Central) Rules. It has been argued that notification inviting application for appointment on contract basis did not describe any period of contract. It merely refers to sanitation work. When the working of the petitioners for more than 240 days was established by evidence and the respondents have not produced any evidence in rebuttal, the learned labour court committed an error of law in holding that the petitioners did not complete 240 days. It was for the respondent No.2 to produce and prove the attendance register and payment of receipts. Adverse reference ought to have been therefore drawn against the respondent No.2 for non-producing the original documents. It was argued that the petitioners never submitted an application for appointment with the respondents for consideration of his name by draw of lottery. The learned labour court therefore committed an error of law apparent on the face of record to hold that the petitioners having submitted the application in response to the

advertisement for appointment afresh, he cannot be permitted to raise the grievance with regard to non-compliance of Section 25-F and 25-H of the Industrial Disputes Act.

Learned counsel for the petitioners relied upon the Division Bench judgment of this Court in *Pramod Chand vs. State of Rajasthan & Ors.*, reported in 1997 WLR (Raj.) 351 wherein it was held that it was the duty of the employer to offer the job by sending registered letter to the employee to join the post. That having not been done, there was violation of Section 25-H. Learned counsel for the petitioners also relied upon the judgment of Co-ordinate Bench of this Court in *Manager, Bijainagar Kriya Vikriya Sahkari Samiti Ltd. vs. Judge, Labour Court, Ajmer & Anr.* reported in 1998 LAB.I.C. 3138 wherein it was held that the plea that employment was contractual appointee was required to be proved by employer. Learned counsel also referred the judgment of Hon'ble Supreme Court in *S.M. Nilajkar & Ors. vs. Telecom District Manager, Karnataka* reported in 2003 LAB.I.C. 2273 wherein it was held that failure of the employer to prove that the

termination of the employment fell within Sub-clause (bb)(oo) of Section 2 of the Act amounts to retrenchment. He also relied upon a decision of Single Judge of this Court in S.B. Civil Writ Petition No.561/1989 decided on 04th May, 1992 wherein it was held that if the appointments were made on contract basis and a contract was not renewed in writing yet, appointees were allowed to continue, such appointments would become appointments for an independent term. It was therefore argued that the writ petitions be allowed.

On the other hand Mr.Rameshwar Dave, learned Dy. Govt. Advocate argued that award passed by the learned labour court is legal and justified and does not call for any interference. He argued that there has been a shift in the approach of law on the question of burden of proof even since the judgments referred to by the learned counsel for the petitioners were delivered. He argued that the appointment of the petitioner were made only on month to month contract basis. There was no requirement of producing the documents of contract. Acceptance of the appointment on such condition

should clearly prove that petitioners were having clear knowledge and understanding that their appointments were made on contract basis which was extendable on month to month basis. Learned counsel has referred to the cross-examination of the workman Pradeep Kumar in which he has stated that appointments were made on contract basis, which contract used to be extended from time to time. Similar statements were also made by other workman. It was submitted that when the appointments of the petitioners were made on contract basis this category of appointment would be extended being covered by Clause (bb) of Section 2(oo) of the Act. He has further argued that when the respondents vide advertisement dated 31st October, 1997 invited applications for appointment on the post of Sweeper on contract basis, respondents submitted their applications and as per the instructions of the Government names for appointments were finalized by draw of lottery. This fact has been acknowledged by all the petitioners that they applied in response to the lottery, but their names were not finalized. He therefore argued that the writ petitions be dismissed.

In pleadings of the writ petitions, the petitioners seek to prove in all these cases is that their retrenchment was not made though they completed 240 days in the calender year immediately preceding the date of their retrenchment. In the case of the petitioner Smt. Sugani however, the date of appointment is much earlier than the date of termination indicated in terms of reference. According to her case, she was removed from services on 31st June, 1996. In other cases although the date of termination given in the statement of claim corresponds to such date given in the terms of reference. The workman in their cross-examination before the learned labour court admitted that their appointments were made on contract basis. They have also admitted that their appointments were made under the approval of the Commissioner and Chairman of the Municipal Council, Pali. They have further admitted that the appointments were made on contract basis, term of which used to extend from time to time.

In other cases also the learned labour court has noted the stand of the management that appointments of workmen in their services were made on contract basis and when sanction for temporary recruitment on the post of 125 Sweeper was received from the Government, list of all 127 former employees who earlier worked on daily wages basis or contract basis was prepared and the decision to make appointments was taken by draw of lottery on 04th August, 198 in which such ex employees were reemployed. The learned labour court has noted the contention of the workman Smt. Sugani in the award wherein although the workman Sugani in her statement of claim maintained that she worked only from 15th April, 1994 to 30th June, 1994 but the respondents in their reply thereto asserted that she worked from June, 1997 on contract basis which was extended on month to month basis up to June, 1998. When the respondents invited their applications on 31st July, 1997 Smt. Sugani failed to apply in response thereto. Similar version has been made in the case of Tara wherein she has been shown to have worked from April, 1997 to August, 1998 on monthly contract basis. Same is the position with regard to

other three cases namely Santosh, Rekha and Smt. Lali wherein also the same version has been made with regard to appointment of the petitioners being on contract basis. While in all other cases it has been found by the learned labour court that when applications for appointments were invited by advertisement dated 31st July, 1997. The petitioners except Sugani applied and were not selected. Total working period of the petitioners has remained confined anywhere between one year to two year. They have not proved that their appointments were made by any acceptable mode of recruitment. They were therefore required to prove with regard to the violation of Section 25-F, G and H of the Industrial Disputes Act. Basic fact which the respondents were required to prove was that they had completed 240 days in the calender year immediately preceding the date of their alleged retrenchment. When the respondents had all along been asserting that their appointments were made on contract basis and particularly when the petitioner Pramod Kumar in his cross-examination admitted such appointments being on contract basis, the burden of proof lay on the workmen to

show that their appointments were made otherwise than on contract basis and they completed 240 days in the calender year immediately preceding respective dates of their termination.

Arguments with regard to violation of Section 25-H lost all its strength when the workmen themselves applied for appointments in response to advertisement dated 31st July, 1997. If in the draw of lottery their names did not come that would not detract from the issue that they did apply. It was only Sugani who did not apply but in her case too it is found by learned labour court that while in terms of the reference her date of termination was indicated as 01st July, 1998 but in her statement of claim she claimed such date of termination 01st July, 1996. She failed to explain in her cross-examination that for how many days she worked while in the statement of claim stated that she was initially engaged from 15th April, 1994, in her statement before the court she stated as her initial engagement was made in July, 1997. She had also stated in her application for lottery. In this circumstances learned labour

court find violation of law in her case too.

Their Lordship of Hon'ble Supreme Court in the case of Municipal Council Sujanpur vs. Surinder Kumar reported in 2006 (5) SCC 173 held that burden to prove completion of 240 days for the purpose of Section 25-F lies on the workman.

On consideration of the entire conspectus of the case it is found that the petitioners in these cases were engaged on monthly contract basis which was extended from time to time and when the respondents issued advertisement dated 31st July, 1997 inviting applications for appointments, such appointments were to be made on the basis of draw of lottery. Other candidates excepts Sugani had applied but they were not selected while others were selected. Draw of lottery was made only amongst those who were earlier engaged with the respondents as Sweepers. In the facts of the case therefore it cannot be said that the petitioners have been able to prove violation of either 25-F or 25-H of the Act.

In the result, I do not find any merit in these writ petitions. The writ petitions are dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC