

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

Writ Petition (C) No. 5655 of 2003

Date of Decision : April 30, 2007

M.C.D. Petitioner
Through Ms. Saroj Bidawat, Advocate

versus

VIJAY PAL & ORS. Respondent
Through Ms. Pragnya, Advocate

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers 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.

REKHA SHARMA, J.

Shri Vijay Pal was engaged in the Horticulture Department of the Municipal Corporation of Delhi with effect from February 25, 2001 as a 'Muster Roll Mali' on daily wage basis on a monthly salary of Rs. 875/- subject to revision from time to time under the Minimum Wages Act. It so happened that on June 26, 1992, the MCD terminated his services. Feeling aggrieved, he raised an industrial dispute which was referred to the Industrial Tribunal for adjudication. The terms of reference were as under:-

“Whether the services of Shri Vijay Pal – Muster Roll
Mali/Beldar have been terminated illegally and/or

unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

The Industrial Tribunal decided the reference in favour of the workman holding that his services were illegally and unjustifiably terminated as the MCD before doing so did not comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. Accordingly, it directed his reinstatement with continuity of service and full back wages with effect from February 26, 1992 onwards.

It was now the turn of the MCD to feel aggrieved and that is why this writ petition assailing the order of the Tribunal.

The stand of the MCD before the Tribunal as also before this Court has been that workman had himself abandoned the job and, therefore, there was no question of the MCD terminating his services or not complying with the provisions of Section 25-F of the Industrial Disputes Act. In any case, it was argued that the aforesaid section did not apply to the case of Vijay Pal as he had not worked with the MCD for a continuous period of not less than one year and it was only in that event that he was entitled to one month's notice or wages in lieu thereof.

Needless to say that the workman asserted that he had worked for a continuous period of one year before his services were terminated.

The Tribunal held against the MCD on both the counts, and consequently, as noticed above, directed reinstatement of the

workman with continuity of service and full back wages.

It is well settled that in the case of abandonment of service the employer has to give one month's notice to the workman calling upon him to resume his duties and also to hold an enquiry before terminating his services on that ground. The onus obviously is on the employer to prove the same.

Having regard to the above settled position of law and in view of the stand taken by the MCD, it should have led evidence to prove that the workman was sent notices calling upon him to resume duties and on his failure to respond to the same, an inquiry was held against him before terminating his services. It did lead evidence but its witness Shri A.K.Chauhan, Assistant Director (Hort.), who appeared before the Tribunal deposed to the contrary. It was admitted by him in cross-examination that no letter was sent by the MCD calling upon the workman to resume duties and no memo, charge-sheet or show cause notice was given to him nor any departmental enquiry was conducted against him. His evidence thus was such that rather than substantiating or furthering the case of the MCD, it had the negative effect of disproving its own defence that the workman had abandoned the job of his own.

The other defence raised by the MCD that the workman had not worked continuously for a period of one year also fell flat on the strength of the evidence of the aforesaid witness. In response to a query to him during his cross-examination, he stated that the workman must have worked from 25th February, 1991 to 26th June,

1992 as a mali/beldar continuously. He further stated that no notice or notice pay or service compensation was either offered or paid to the workman.

As per Section 25-F of the Industrial Disputes Act, 1947, 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 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.

In the face of the above oral evidence which came from the lips of none other than the MCD's witness, it cannot but be held that Vijay Pal had worked continuously for a period of one year when his services were terminated and before the MCD did so, it did not comply with the provisions of Section 25-F of the Act. It may also be noticed that the MCD did not produce the muster roll register which was exclusively in its possession. Had it done so, it would have revealed whether the workman had worked from 25th February, 1991 to 26th June, 1992.

The workman on his part had appeared as its own witness and made assertions to the effect that his services were illegally terminated and that he had worked continuously for a period of one year preceding his termination. It was for the MCD to effectively rebut his evidence either by producing the muster roll register or by leading such other evidence as has been indicated above. The MCD did lead

evidence but it was such that it lent support to the case of the respondent / workman.

There is no merit in the writ petition and the same is dismissed with no order as to costs. .

APRIL 30 , 2007
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REKHA SHARMA, J.