

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

Judgment Reserved on January 16, 2014
Judgment Delivered on January 31, 2014

+ **W.P.(C) 562/1992**

UNIVERSITY OF DELHI

..... Petitioner

Represented by: Mr.Anurag Mathur, Advocate

versus

R.K. YADAV

..... Respondent

Represented by: Mr.Rajiv Agarwal, Advocate
with Mr.Anuj Agarwal and
Mr.Sachin Sharma, Advocates

+ **W.P.(C) 2793/2003**

RAM SHEKHAR JHA

..... Petitioner

Represented by: Mr.Rajiv Agarwal, Advocate
with Mr.Anuj Agarwal and
Mr.Sachin Sharma, Advocates

versus

UNIVERSITY OF DELHI & ANR.

..... Respondent

Represented by: Mr.Anurag Mathur, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. These two writ petitions involve one person namely Mr.Ram Shekar Jha arising from two different awards passed in two different industrial disputes raised by him and the issue being inter-connected, with the consent of the counsel for the parties are being disposed of by this common order.

For the purpose of convenience, I refer the University of Delhi as “petitioner University” and Mr.Ram Shekar Jha as “respondent”.

W.P.(C) 562/1992

2. The challenge in this writ petition is by the petitioner University to the Award dated September 17, 1991 in I.D No.481/1986 which was referred to the Labour Court by the appropriate government with the following reference:

“Whether the service of Shri Ram Shekar Jha 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?”

3. It was the case of the respondent that he was in employment of Delhi University Sports Council since June, 1981. According to him, his services were terminated with effect from January 11, 1986 without assigning any valid reason. It was his case that persons junior to him have been retained in service. He alleged that his termination was in violation of Section 25(F), (G) and (H) of the Industrial Disputes Act,

1947 (hereinafter referred to as the Act). He claimed reinstatement with full back wages and continuity of service.

4. The petitioner University contested the claim of the respondent by stating that the engagement of the respondent was purely temporary, casual/daily wager in one of the departments of the University Sports Council. The University had also stated that he was governed by the non-teaching employees terms and service Rules, 1971. It was also stated that the respondent was given work as and when the same was available. The University has taken a stand that the respondent himself stopped coming for his work with effect from January 11, 1986. On the issue of his date of employment, the University stand is that he was engaged on July 13, 1981.

5. Three issues were framed by the Labour Court which are as follows:

(1) Whether the reference is bad in law in view of preliminary objection taken in the W.S.

(2) Whether the present dispute is not an Industrial Dispute in view of Section 2(A) of the Industrial Disputes Act.

(3) As in terms of reference.

6. Insofar as the issue No.1 is concerned, it was concluded by the Labour Court that the employer has a special status and whether a legal entity or not, if he is an employer, he can sue and be sued in regard to the statutory provisions under the Act. Reliance was placed by the Labour

Court on the judgment reported as (1975) 2 LLJ 265. The Labour Court held that whether Delhi University Sports Council has a legal status or entity or not is not going to help the cause of the management. It was concluded that since the respondent was employed by the Delhi Sports Council, the reference was maintainable.

7. The issue No.2 was also decided in favour of the respondent by holding that the respondent had no intention to abandon his job. Since his services have been illegally terminated, the provisions of Section 2(A) of the Act are applicable.

8. On issue No.3 the Labour Court concluded that the termination was in violation of Section 25(F) and (G) of the Act, so the retrenchment of the respondent being void ab-initio deemed to be in the service with continuity of service and full back wages.

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9. This writ petition has been filed by the respondent herein seeking a direction from this Court against the petitioner University to implement the Award dated July 03, 2002 passed in I.D No.224/1996. He had also sought a restraint order against the petitioner University from employing other candidates against the permanent vacancies before granting regularization to the petitioners in terms of Award dated July 03, 2002 in I.D No.224/1996. The Industrial Dispute No.224/1996 was referred by the appropriate Government for the adjudication of the Industrial Tribunal No.1, Karkardooma, Delhi with the following terms of

reference:

“Whether Shri Ram Shekhar Jha is entitled to be regularized in the proper pay scale from the date of his initial appointment and if so, to what directions are necessary in this respect?”

10. It is noted from the Award dated July 03, 2002 that similar averments have been made by the respondent in his claim petition. The respondent had also stated that pursuant to the Award of the Labour Court in the earlier dispute dated September 17, 1991, he has been reinstated in service on March 12, 1992. According to him, he has been working on a regular post but was being treated as a daily wager though he was performing similar duties as that of regular employee and his non-regularization from the initial date of appointment is violative of the provisions of the Constitution and being unfair in contravention of Equal Remuneration Act. The petitioner University has not disputed the date of appointment and the fact of dismissal and reinstatement but has added that the award of the Labour Court dated September 17, 1991 has been challenged before this Court which writ petition has been admitted. The claim of regularization was contested by the respondent on the plea that the initial appointment of the respondent was not as per the procedure prescribed and he was not selected by the Selection Committee or the UGC against any permanent vacancy and that the respondent had only worked for few days in the year between 1981 to 1986. According to the petitioner University, the respondent himself started absenting. The Labour Court in the impugned order has come to a finding on the basis of the testimony of the University witness that the respondent was working continuously since 1981 and a person who was junior to the

respondent and similarly placed was regularized in the year 1986 was of the view that the respondent is entitled to be regularized from the date his junior was regularized in the year 1986 and liable to be paid a salary of that of a regular employee from the date of his regularization. It directed that dues in salary be paid within a period of one month. It was made clear by the Labour Court, in the Award dated July 03, 2002 that the period between June, 1986, the date when the services of the respondent was terminated and March 16, 1992 when the respondent was reinstated, the payment of wages shall be dependent on the outcome of the writ petition as above before the Hon'ble High Court of Delhi as in the same the payment of back wages have been stayed.

11. Mr. Anurag Mathur, learned counsel for the petitioner University would submit that the service of the respondent stood regularized vide order dated January 27, 2005 with effect from August 01, 1986 pay scale of ₹750-940 (pre-revised). He also informs that the respondent though regularized from August 01, 1986, his pay has been fixed notionally with effect from that date and the pay has been actually given only with effect from January 27, 2005, the date when the order of regularization was issued. He would also state that the Labour Court has erred in granting the full back wages in its award dated September 17, 1991, which is impugned in W.P.(C) 562/1992 by the University of Delhi. According to him, it is now a settled position of law, when a Labour Court grant reinstatement, the back wages may not follow automatically. He would also state that the termination has been held to be bad on a technical plea that Section 25(F) and (G) have been violated. He would vehemently argue that the order of the Labour Court granting him full back wages be

set aside. He would also state that the action of the University fixing the pay of the respondent notionally with effect from August 01, 1986 and actually with effect from January 27, 2005 is just and proper as the pay fixation in a particular pay scale is fixed only when a regular appointment is made. Earlier to January 27, 2005 the respondent was not working as a regular employee. So, he was rightly denied the benefit of the salary of a regular employee on the principle of 'no work no pay'.

12. On the other hand, Mr. Rajiv Aggarwal, learned counsel for the respondent would state that the respondent should be given the benefit of both the awards which are subject matter of these two writ petitions. He would state that the challenge of the University in these writ petitions is against the initial award that is limited to the extent of grant of full back wages to the respondent. He would submit that in the absence of any challenge to the subsequent award which had granted regularization to the petitioner, wherein the Labour Court had granted the benefit of salary that of a regular employee to be paid within a period of one month, the University could not have denied the benefit of salary of a regular employee and given the benefit only notionally.

13. Having considered the rival submissions made on behalf of the parties, the scope of the writ petition is very limited. In W.P.(C) 562/1992 filed by the petitioner University, the only issue is with regard to aspect of back wages for the period between January 11, 1986 to March 12, 1992 and in W.P.(C) 2793/2003 filed by the respondent, entitlement of salary as a regular employee is with effect from the year 1986. Suffice would it be to say, the petitioner University has not

challenged the Award dated July 03, 2002. It has attained finality. Premised on this fact, Mr.Anurag Mathur, learned counsel for the petitioner cannot even contend that the conclusion in the award for grant of salary as a regular employee is bad. I outrightly reject the submission of Mr.Anurag Mathur based on the principle of ‘no work no pay’.

14. Insofar as the first issue arising in W.P.(C) 562/1992 is concerned, the position would depend upon the conclusion of this Court on issue No.2, which arises in W.P.(C) 2793/2003. Insofar as the Award dated July 03, 2002 is concerned, the Labour Court is very clear that the respondent is entitled to regularization from the year 1986 and salary thereof. It is a fact that the respondent was regularized with effect from August 01, 1986 vide order dated January 07, 2005. The order of regularization is without any condition, rightly so for the reason no conditions were put by the Labour Court in its Award dated July 03, 2002. Further in the absence of any challenge by the petitioner University to the said award, the respondent shall be entitled to the benefit of salary from the date of his regularization i.e. August 01, 1986, as directed by the Labour Court.

15. Since the respondent is entitled to salary with effect from August 01, 1986, the back wages for the period between August 01, 1986 to March 12, 1992 shall get merged in the arrears of pay which the respondent shall receive pursuant to this order. It is made clear that for the period January 11, 1986 (date of termination) to July 31, 1986, the respondent shall not receive any back wages. This answers the issue arising in W.P.(C) No. 562/1992.

16. In view of the above, both the writ petitions are disposed of.

17. No costs.

(V.KAMESWAR RAO)
JUDGE

JANUARY 31, 2014
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