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Court : Delhi

Decided On : Apr-01-2014

Judge : V. Kameswar Rao

Appellant : Mahesh Kumar

Respondent : M/S. Fruit and Vegetable Projects Through Its Cmd

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on April 01 , 2014 + W.P.(C) 2054/2014 MAHESH KUMAR Represented by: ..... Petitioner Mr. S.K.Anand, Advocate versus M/S. FRUIT AND VEGETABLE PROJECTS THROUGH ITS CMD .....Respondent Represented by: None CORAM: HON'BLE MR. JUSTICE V.KAMESWAR RAO V.KAMESWAR RAO, J.

(Oral) 1. The challenge in this writ petition is to the award dated May 15, 2008 passed by the Industrial Tribunal in I.D. No.05/2001 whereby the Industrial Tribunal has held that the action of the respondent in terminating the services of the petitioner is legal and justified, and also to the order dated May 02, 2013 of the Industrial Tribunal whereby it has refused to review the award passed on May 15, 2008, a reference of which has already been given above.

2. It was the case of the petitioner before the Industrial Tribunal that he was appointed by the respondent as casual worker on temporary basis initially for a period from October 17, 1995 to January 16, 1996, which appointment was

extended from time to time, the last one being from July 14, 1997 to September 13, 1997 vide letter dated July 14, 1997 (at Page 40 of the writ petition). According to the petitioner, the termination of his services is illegal as the appointment of the petitioner was on temporary basis and could not have been effected when the work exists. The Industrial Tribunal has held that the termination was in accordance with Section 2(oo) (bb) and Section 25-F of the Industrial Disputes Act, 1947 (Act in short).

3. It is contended by the learned counsel for the petitioner that Section 2 (oo) (bb) of the Act has no relevancy in the facts of this case. According to him, the appointment of the petitioner was on temporary basis, for which the fixed period mentioned in the appointment letter looses its relevancy. In other words, the appointment cannot be construed for a fixed period. He would urge that one Kiran Pal, who was a Trainee Technician, was made a Technician after the termination of the petitioner.

4. Having heard the learned counsel for the petitioner, I find from the appointment letters issued from time to time that the appointment of the petitioner was for a fixed term for a period roughly for 89 days, the last one being from July 14, 1997 to September 13, 1997. Thereafter, there was no further extension of his appointment. The terms of appointment have to be read in totality. The usage of the word temporary basis in the appointment letters denotes, the appointment is not regular. The appointment of the petitioner on temporary basis being for a fixed period, Section 2 (oo) (bb) of the Act would come into play. That apart, I find, while terminating the services of the petitioner, the respondent has followed the provisions of Section 25-F of the Act, as concluded by the Industrial Tribunal. I do not see any infirmity insofar as such a conclusion of the Industrial Tribunal is concerned.

5. Insofar as the plea of discrimination qua Mr. Kiran Pal is concerned, I find, no such plea was taken in the claim petition except a bald averment that a workman junior to the petitioner is continuing in the department without naming him. In the absence of any specific averment and the name of the person so engaged, no relief could have been granted by the Industrial Tribunal. That apart, it has been

observed by the Industrial Tribunal in its order dated May 02, 2013 as under:

The Management witness has stated in his cross-examination that one Sh. Kiran Pal been continued in service. He was in freezing department whereas the workman was in the Battery Department. Sh. Kiran Pal was trainee technician and he was in deferent department, so his services have been retained. He was working at the time of this workman. In view of the aforesaid observation of the Industrial Tribunal, even the last plea of the petitioner is unsustainable. I do not find any merit in the writ petition. The same is dismissed.

6. No costs. CM No.4303/2014 In view of the dismissal of the writ petition, the present application is also dismissed. (V.KAMESWAR RAO) JUDGE APRIL01 2014 akb

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