

Mahipal Singh Vs. Trade Fair Authority of India and ors.

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Court : Delhi

Decided On : Feb-04-1992

Reported in : 48(1992)DLT357; 1992(22)DRJ395; (1993)IILLJ876Del

Judge : Mahinder Narain, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2(KKK)

Appeal No. : W.P. No. 2727/1988

Appellant : Mahipal Singh

Respondent : Trade Fair Authority of India and ors.

Advocate for Pet/Ap. : Bharti Patni,; Raj Panjwani and ; Raj Panjwani, Advs

Judgement :

ORDER

dated OH. 12.1989 reads as under:- 8.12.89. Present: Mr. Dalip Singh for the petitioner. Mr. Raj Panjwani with Mr. Vijay Panjwani for the respondents. Cw 2727/88 The documents and the counter-affidavit filed by the respondents do not meet the points raised in the petition, particularly, with regard to the petitioner having continued for over .six months,and the petitioner being a Scheduled Caste. The petitioner has continued for over six months even after 3rd December, 1987. In this situation, we issue Rule. Further, four weeks' time is allowed to the respondents to file further counter-affidavit. Rejoinder, if any, to be filed within two

weeks thereafter. Since the petitioner is out of job, we direct that the petition should be set down for final disposal on 20th February, 1990. High up. sd/- N.N. Goswamy, J. sd/- December 8, 1989A.B. Saharya, J.

(31) In view of the nature of the counter-affidavit filed, in view of the aforesaid orders of the Court, in view of non-production of relevant record, like the attendance register which I had directed production of, and which was not produced, it appears that the case of the petitioner is right as against the case of the respondent. In any case, I am inclined to accept that there is no order of termination of employment of the petitioner as Technical Assistant. I am further inclined to accept the case of the petitioner that owing to the superior position of the respondent the petitioner was forced to serve as a wireman, and was treated as a muster roll employee at a much reduced rate of salary despite the fact that he was entitled to receive more money as a Technical Assistant.

(32) I must deal with one more point, which is that in the letter of appointment dated 09.10.1987, the subject is described as 'Filling up the post of Technical Assistant (Elect.) on daily wage basis for India International Trade Fair 1987'. The respondent on the basis of the aforesaid endorsement, asserted that the period of employment got Fixed by that 'subject matter'. I am not inclined to accept this contention of the respondent for the reason that it is submitted by the respondent that International Trade Fairs always invariably, commence on 14th November each year. 14th November is the commencement date for the reason that that happens to be the date of birth of Pt. Jawaharlal Nehru, the first Prime Minister of India, and that duration of International Trade Fairs is only 15 days. If the contention of the respondent based upon the aforesaid endorsement of the letter of appointment is correct, then the petitioner would have only been appointed w.e.f. 14.11.1987, and his employment would have been terminated on 30.11.1987. This is not what had not happened. The petitioner admittedly joined before the India International Trade Fair 1987, commenced on 14.11.1987, and continued after it was over on 30.11.1987, as the respondent purported to terminate the employment of the petitioner by putting up a notice on the notice board on 3rd November, 1987 which reads as under:-

NO:4-TFA(21)/E.I./87TRADE Fair Authority Of India New Delhi, 3rd Nov. 1987. Office Order NO.ADMN./1076/87 With the approval of the Competent Authority, the following persons have been engaged as Technical Assistants on daily wages @ Rs.48.00 per day per person, in connection with I.I.T.F.'87 for the period as shown against each: S.No. Name 1. Sh. Ishwari Prasad 5.10.87 2.12.87 2. Sh.Moinuddin 5.10.87 2.12.87 3. Sh.Syed Irfan Raza Rizvi 5.10.87 2.12.87 4. Sh.Sanjay Kumar 20.10.87 2.12.87 5. Sh.Ashwini Kumar Vij 20.12.87 2.12.87 6. Sh.Mahipal Singh (Electrical) 9.10.87 2.12.87 The Authority retains the right to terminate their services without notice, at any time. sd/- (V.P. Gupta) Asstt. Manager (Admn.) To The persons concerned. Copy to:- 1. Salary/General/E.II/E.III 2. Secretary to Chairman/PA to Cgm (KVR) 3. PAs to GM(BB)/GM(MLW)/GM(SK)/FA&CAO;/GM (VDNR)/GM(KNM)/GM(NSB)/M(ADMN.) 4. Office Order File.

(33) It is contended on the basis of this document that the services of the petitioner as Technical Assistant were terminated on 2.12.1987.

(34) If the letter of appointment is compared with the notice of 3rd December, 1987, then it becomes clear that the petitioner was not employed for the duration of the India International Trade Fair, which commenced on 14th November, 1987 and ended on 30th November, 1987. He was employed as a Technical Assistant. The letter terminating his services was not given to him, nor his signatures obtained in lieu of receipt of this notice. Such a termination letter, bearing endorsement of its receipt has not been produced in Court, despite order of this Court dated 22.09.1989. It is to be noted that on the letter of appointment, appointing the petitioner as Technical Assistant on daily wages of Rs.48.00 per day, his signatures were obtained. The fact that the signatures of the petitioner were not obtained, in my view, is indicative of the fact that the services of the petitioner were not terminated. The person who has been appointed by a letter of appointment, his services should be terminated by letter of termination, and both the offer of employment and termination of employment must be communicated to the person concerned. In the instant case, there is no communication of the letter of termination of employment to the petitioner.

(35) In the facts and circumstances of the case, therefore, I have to hold that the petitioner continues in service of the respondent authority, as his services have not where been terminated by the respondent and as there is no termination of services of the petitioner, the petitioner is entitled to continue and to remain in service of the respondent till his services are terminated by appropriate order of termination. The petitioner is entitled to a writ of mandamus, and I accordingly issue a writ of mandamus, directing that the petitioner continues to be in service of the respondent as a Technical Assistant (Electrical), and is entitled to the salaries, all allowances and other benefits accruing as a result of such employment.

(36) Having held that the petitioner's services have not been terminated, and that he is entitled to continue and remain in service of the respondent till his services are terminated by an appropriate order of termination, another contention of the petitioner needs to be dealt with.

(37) The petitioner has contended that by virtue of the superior position of the respondent vis-a-vis the petitioner, the petitioner was made to serve as a wireman instead of Technical Assistant. The petitioner relies upon the judgment of the Supreme Court in the case Central Inland Water Transport Ltd. and another v. Brojo Nath Ganguly and another, : (1986)11LLJ171SC , wherein the Supreme Court has accepted the position that in certain regulations made by employers need to be struck down, being a reflection of unequal bargaining powers. This position was reiterated by the Supreme Court in the case Delhi Transport Corporation v. D.T.C. Mazdoor Congress & ors., Jt 1990 (3) 725.

(38) In view of the aforesaid judgments of the Supreme Court, and in view of the admissions made in para 26 of the counter-affidavit, which has been referred to above, it is clear that the petitioner has been made to serve as a wireman instead of Technical Assistant (Electrical) in view of the superior bargaining position of the respondent. In view of what is stated in para 26 of the counter-affidavit, the contention of the petitioner that he has served for a period more than 240 days, stands established. The petitioner having continued to serve the respondent for more than 240 days in a calendar year, is entitled to be regularised.

(39) I, therefore, order and direct that the services of the petitioner be regularised as a Technical Assistant. In my view, this direction to the respondent will be in consonance with the judgment of the Supreme Court in the case Surinder Singh and another v. C.P.W.D. Air 1986 SC 583 and in the case B.R. Singh and others etc.etc. v. Union of India and others : (1989) 11 LLJ 591 SC . Accordingly, this writ petition is allowed.

(40) In the facts and circumstances of the case, the petitioner is also entitled to costs, which I quantify at Rs.3,000.00 .

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