



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

% Judgment reserved on: 05.05.2025
Judgment delivered on: 15.05.2025

+ CM(M) 1438/2019

DEEN DAYAL UPADHYAY HOSPITALPetitioner

versus

SANGEETARespondent

Memo of Appearance

For the Petitioner: Mr. Tushar Sannu, with Mr. Utkarsh Singh, Advocates

For the Respondent: Mr. Ankit Dwivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner (*hereinafter referred to as 'Management'*) is aggrieved by Award dated 14.02.2019 passed in LIR No. 668/2016 whereby the respondent has been held to be in continuous employment of the Management and, resultantly, she has been awarded compensation of Rs. 70,000/-.
2. Respondent had raised industrial dispute.
3. She was aggrieved by illegal termination of her services.
4. The dispute raised by her was referred to the Court for adjudication *vide* Reference dated 23.10.2015. Term of Reference is as under:-



"Whether the services of Smt. Sangeeta W/o Late Sh. Sudhir Prasad, have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is she entitled and what directions are necessary in this respect?"

5. On receiving Reference, notice was issued to the respondent, who filed *Statement of Claim*, in which she, *inter alia*, averred that she was working as *Safai Karamchari* with the Management since May, 2007 and that her last-drawn monthly salary was Rs. 5,500/-. According to her, Management had not provided her with any facility, including various allowances like HRA, Transport Allowance, leaves etc. and despite persistent request made in this regard and despite assurance given by Management, needful was not done. She claimed therein that salary paid to her was less than the minimum wages prescribed by Delhi Government and when she raised objection in this regard with the Management, getting annoyed, the Management, instead, terminated her services on 25.04.2015.

6. Management resisted such claim and in its written statement, it rather came up with the contention that their Hospital was owned by Government of National Capital Territory of Delhi (GNCTD) and the sanitation services had been outsourced by them. In year 2014, *M/s ACME Enterprises* had been providing such sanitation services and it was the duty of such service provider to pay wages to such workers. According to Management, the name of the respondent in question i.e. Ms. Sangeeta was not even figuring in the list of workers provided by



M/s ACME Enterprises and it was also denied that she was working in the hospital as *Safai Karamchari* since May, 2007. The Management also claimed in its written statement that in September 2014, contractor left the services, *suo moto*, without any prior notice and in order to ensure that there is no disruption of sanitation services and also in view of the fact that there was no breathing-time to make any alternate arrangement, sanitation workers were hired on daily-wage basis. However, once the new tender for sanitation services in DDU Hospital was finalized in April, 2015 and the Award was given to the concerned service provider as per tender outcome, services of daily-wage workers were discontinued. The Management also claimed that it had not obtained signatures of any such daily-wager on a blank paper or voucher and it also provided the details of minimum wages, paid to respondent between 03.09.2014 to 24.04.2015.

7. Thus, it was contended that respondent was not working on regular basis and was not appointed as regular employee in the hospital and being daily-wager, her claim had no merit and, therefore, it prayed that claim be dismissed.

8. Following issues were framed: -

(i) *Whether the claimant/workman was the employee of the management? OPW.*

(ii) *Whether the claimant was the employee of the contractor as alleged by the management? OPM*



(iii) Whether the claimant has completed 240 days continuous service with the management immediately preceding the alleged date of termination? OPW.

(iv) Whether the claimant worked with the management for few days as daily wager, if so, its effect? OPM.

(v) Whether the services of the workman has been terminated by the management illegally and unjustifiably? OPW

(vi) Whether the workman is entitled to the relief claimed? OPW

(vii) Relief.”

9. Respondent entered into witness-box as WW1.

10. The Management did not examine any witness and after perusal of the pleadings and the evidence, as aforesaid, the learned Labour Court has awarded a lump sum compensation of Rs. 70,000/- to her with direction to pay the same within one month from the date of publication of Award.

11. Such order is under challenge.

12. According to learned counsel for the Management, the learned Presiding Officer has erred in deciding all the issues against them. It is vehemently contended that the submissions given in the written statement were not appreciated in the desired manner and there was nothing to indicate that respondent was under the employment of the Management. It is reiterated that sanitation services had been outsourced to *M/s ACME Enterprises* who left the services on their own and there was never any privity of contract between them and the respondent. It has also been contended that initial onus was on the respondent to prove that she was in continuous employment of 240 days, prior to the alleged date of her

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termination. Since she failed to discharge her such initial onus and there was nothing to indicate that she was working under the Management since May, 2007, the claim should have, rather, been dismissed. Reliance in this regard has been placed upon (i) *The Burrakar Coal Company Ltd. Vs. The Labour Appellate Tribunal of India and Others*:1957 SCC OnLine Cal 162 (ii) *The Superintending Engineer, Twad Board and Another Vs. M. Natesan and Others*:(2019) 6 SCC 448, (iii) *Municipal Corporation, Faridabad Vs. Siri Niwas*:2004 SCC OnLine SC 1033, (iv) *Range Forest Officer Vs. S.T. Hadimani*: 2002 SCC OnLine SC 226 and *Surendranagar District Panchayat Vs. Dahyabhai Amarsinh*: 2005 SCC OnLine SC 1536.

13. Undoubtedly, initial onus is always on any such workman to demonstrate that such workman worked continuously for 240 days.

14. However, herein, fact remains that respondent made clear and specific averments in this regard in her *Statement of Claim*. She even made reference to various cheques which had been allegedly issued by none other than Management in her favour. She reiterated her stand in her examination-in-chief. Her deposition is, virtually, uncontroverted and unchallenged. The sketchy cross-examination done by the Management goes on to indicate that the Management does not dispute the claim and averments made by her. In her cross-examination, she reiterated that she joined the services in the year 2007 and was categorical in mentioning that she was appointed by the Management/DDU Hospital. She denied the



suggestion that she was placed in the hospital by the contractor and not by DDU Hospital. She also denied that the documents furnished by her were false and fabricated and she was not employed by DDU Hospital.

15. Interestingly, the fact that cross-examination was virtually non-existent, for the reasons best known to the Management, it did not even contemplate leading any evidence in defence. As noted already, their consistent case is to the effect that there was no privity of contract and that sanitation contract have been given to *M/s ACME Enterprises*, who left the services abruptly. No details of such contract have been placed on record. According to the Management, even otherwise, respondent was not even employed by such outsourced agency and that her name did not figure in the list provided to them. However, again, Management faltered as no such list was produced or proved during the trial. Interestingly, the Management itself admitted that after *M/s ACME Enterprises* left the services, midway, it hired certain workers as daily-wagers. Once they claim so, it was imperative for them to have placed on record, the details of all such daily-wagers whom they allegedly employed. Nothing of that kind was done by them and, therefore, they cannot be heard saying that respondent failed to discharge her onus. Burden of proof, in any enquiry or trial, keeps on shifting and the moment the averments made in the claim petition were deposed on oath by the respondent in her evidence, it was for the Management to have rebutted and disproved the same.



16. The sketchy cross-examination coupled with the fact that no witness was examined by the Management clearly goes on to indicate that learned Labour Court was left with no option but to give Award in favour of the respondent herein. It, however, needs to be mentioned that even though the learned Labour Court had given findings on all the issues in favour of the respondent, as regards relief, it observed as under: _

“40. In his statement of claim the worklady has prayed for a direction to the management for reinstated in service with full back wages but in the considered opinion of the court this is not a fit case for the reinstatement of the worklady in service since long time has passed and in these days of rising prices, it is not possible to survive without any job or work as such the worklady must have been doing some job during this period in order to maintain herself and her family and further this is not the disputed fact that management is a government hospital, and though the worklady has completed 240 days continuous service with the management immediately preceding the date of termination and discontinuation of her service by the management was not legal or justified, yet since the worklady was not taken in employment by the management by following the due and proper rules and regulations meant for a regular and permanent appointment, so this court is of the considered opinion that the ends of justice will be served if a lump sum compensation is awarded to the worklady in lieu of reinstatement with back wages.

41. In 2006 (2) SCALE 115, Union Public Service Commission Vs. Girish Jayanti Lai Vaghela &Ors. it was held that any regular appointment made on a post under a state or a union without issuing advertisement inviting applications from eligible candidate and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enriched under article 16 of the Constitution.

42. Accordingly, a lump sum compensation of Rs.70,000/- (Rupees Seventy Thousand Only) is awarded to the worklady keeping in view the facts and circumstances of case and her last drawn salary. As such the management is directed to pay a lump sum compensation of Rs.70,000/- (Rupees Seventy Thousand Only) to the workman within one month from the date of publication of the award and in case the management failed to pay the said amount during the period as prescribed above, the



workman is also entitled to recover the said amount from the management along with interest at the rate of 7% per annum. Award is passed accordingly and the reference is answered accordingly. Requisite copies of the award be sent to the competent authority for publication as per provisions of Industrial Dispute Act. ”

17. Thus, the approach of the learned Labour Court, even otherwise, seems to be very rationale, reasonable and justifiable.

18. Finding no merit or substance in the present petition, the same is accordingly dismissed.

19. The next date stands cancelled.

(MANOJ JAIN)
JUDGE

15 MAY, 2025/dr