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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 16th September, 2026*

CNR No. DLHC010691642005

+ W.P.(C) 23533/2005

NDMC

.....Petitioner

Through: Mr. Nirvikar Verma, ASC
versus

RAGHUBIR SINGH

.....Respondent

Through: Mr. Chirayu Jain, Adv.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. By the present petition, the petitioner challenges the award dated 23.01.2004 (hereafter '**impugned award**') passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in ID No. 180/95 whereby the learned Labour Court noting that the services of the respondent were unjustifiably terminated, held the respondent entitled to reinstatement along with 50% back wages.

2. The record reveals that the respondent workman joined the services of the petitioner as a *beldar* with effect from 18.11.1986 and was treated as a muster roll worker. The services of the respondent were terminated with effect from 30.09.1993 and the termination order did not assign any reason for the termination.

3. *Vide* the impugned award, the learned Labour Court noted that the services of the respondent were terminated illegally and



unjustifiably. In finding so, the learned Labour Court has categorically noted that undisputedly, the respondent had worked for a period of 287 days during the 12 calendar months preceding his termination. In that regard, the respondent was entitled to receive the protection and benefits encapsulated under the Industrial Dispute Act, 1947. It was noted that the management neither gave any notice nor paid any compensation to the respondent while terminating his services. It was further noted that while allegations of misconduct were made, yet opportunity ought to have been afforded to the respondent to defend himself in the absence of which the termination cannot be sustained. Consequently, noting that the workman had worked with the management for a continuous period of 240 days immediately preceding his termination, and finding that the respondent was entitled to the protection granted under the provisions of the Industrial Disputes Act, 1947, the learned Labour Court granted reinstatement to the respondent along with 50% back wages. Aggrieved by the same, the petitioner has preferred the present petition.

4. By order dated 23.07.2010, this Court had allowed the application preferred by the respondent under Section 17B of the Industrial Disputes Act, 1947.

5. The learned counsel for the petitioner submits that the impugned order is perverse and is liable to be set aside. He submits that since the respondent was not retrenched and was removed as a consequence of punishment, Section 25F of the Industrial Disputes Act, 1947 was not applicable. He submits that the services of the respondent were discontinued because serious misconduct was



committed by the respondent and he engaged in indecent and inappropriate conduct towards female members of the staff. He submits that the respondent along with some other workers were alleged to have deliberately opened packets of condoms before the female staff and the same ultimately resulted in the termination of the services of the respondent. He further submits that since the respondent was a daily wager and not a regular employee, the respondent was not entitled to disciplinary proceedings as has erroneously been appreciated by the learned Labour Court. He consequently submits that the impugned award is liable to be set aside.

6. *Per contra*, the learned counsel for the respondent submits that the impugned award is well reasoned and warrants no interference by this Court. He submits that the respondent is entitled to be reinstated with back wages as awarded by the learned Labour Court as the termination of the respondent was stigmatic.

7. I have heard the counsel and perused the record.

8. At the outset, it is relevant to note that the jurisdiction of the High Court to issue a writ or direction in exercise of power under Article 226 of the Constitution of India is supervisory in nature and the Court ought not to act as an appellate Court. This Court therefore cannot substitute its own view for the view taken by the Labour Court unless the same is shown to be arbitrary or perverse.

9. As is evident from a perusal of the record, the respondent had joined the services of the petitioner as a *beldar* with effect from 18.11.1986. The respondent was treated as a muster roll worker. The services of the respondent were terminated with effect from



30.09.1993. The muster roll of the respondent stood proved as the same was not disputed by the management. Further, as per the muster roll, and as admitted by the management witness, the respondent had worked for 287 days in the last twelve calendar months immediately preceding termination. Consequently, as rightly appreciated by the learned Labour Court, the respondent was thus in continuous service and was entitled to benefit under Section 25F of the Industrial Disputes Act, 1947.

10. The petitioner has sought to contest the same by stating that the respondent was removed as a consequence of punishment. It is the case of the petitioner that the services of the respondent were terminated on account of misconduct involving sexual harassment and consequently the same does not involve invocation of the provisions relating to retrenchment.

11. Even if the case of the Petitioner is taken at the highest, that is the termination was a consequence of “*misconduct*”, and not retrenchment there is no scintilla of doubt in the settled proposition of law that in case the termination order is by way of penalty, the same cannot survive in the absence of any departmental enquiry.

12. The record reveals that no proper enquiry was conducted against the respondent on the factum of the alleged misconduct. No show cause was issued and no opportunity to defend his case was ever granted to the respondent.

13. The petitioner sought to circumvent the need to conduct a departmental enquiry in the case of the respondent by arguing that since the respondent was a daily wager on muster roll, there was no



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need to conduct a departmental enquiry. The said argument, though appears attractive at first blush, pales in view of the decision of the Hon'ble Apex Court in the case of ***M.C.D. v. Praveen Kumar Jain : (1998) 9 SCC 468***. The said case pertained to a workman who was working as a non-technical staff on muster roll as a daily wager. In the said case, the discharge order was passed after holding a preliminary inquiry on the allegation that the workman therein had committed misconduct by persuading his fellow workman to interpolate his name in the list of employees recommended for regularization in service. Consequently, the services of the workman therein were held to be no longer required. On a challenge, the Labour Court had directed reinstatement. Upon a challenge to the Hon'ble Apex Court thereafter, it was observed that the termination order was not passed after a departmental enquiry but by a simple discharge. The management later took the stand that the termination was by way of penalty. On a conspectus of such facts, the Hon'ble Apex Court noted that if the termination is by way of penalty, then a regular departmental enquiry is required to be conducted. It was further noted that the management ought to have appointed an inquiry officer and the report ought to have resulted in an adverse finding against the respondent which would also need to be accepted by the disciplinary authority.

14. Even otherwise, it is a well-settled principle of service law that once an order carries a stigma, an opportunity has to be given to the employee before passing such an order. Even if the order appears routine, the Court is required to look behind the order and ascertain whether misconduct was the foundation for passing it. If so, the order



would be stigmatic and could not have been passed without affording an opportunity to the employee. For this reason, even if the employee is granted a temporary status and the order of termination is stigmatic/punitive, then a departmental enquiry has to precede the order of termination.

15. Consequently, if the termination of the respondent was a discharge *simpliciter*, the same would be violative of Section 25F of the Industrial Disputes Act, 1947. Further, if the termination was a penalty order, as contended by the petitioner, it would fail on merits as not having followed the procedure of departmental enquiry. Considering the totality of circumstances, the learned Labour Court, by the impugned award, rightly found the termination to be illegal.

16. Having upheld the finding of illegal termination, the next issue that arises for consideration is the nature and extent of relief to be granted to the Respondent. It is no more *res-integra* that the finding of illegality of termination does not make reinstatement with back wages automatic.

17. By order dated 23.07.2010, this Court had allowed the application preferred by the respondent workman under Section 17B of the Industrial Disputes Act, 1947. Learned counsel for the petitioner submits that it has been complying with the 17B orders. Though the amounts paid under 17B are in the nature of subsistence allowance, however, the Respondent has gotten the benefit of payments made under 17B without working or rendering any services to the petitioner and the petitioner had been paying the same for a long period. The respondent was also only a daily wager and had rendered



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services for a period of approximately 7 years.

18. In the opinion of this Court, considering the totality of circumstances, ends of justice will be met by modifying the relief and awarding a lumpsum compensation of Rs. 3,00,000/- to the respondent in lieu of reinstatement.

19. The same shall be paid by the petitioner within a period of eight weeks from the date of this order.

20. The above compensation amount shall be paid over and above sums validly paid under Section 17B of the Industrial Disputes Act, 1947.

21. Accordingly, the impugned award is modified to the above extent and present petition is disposed with the above directions.

AMIT MAHAJAN, J

SEPTEMBER 16, 2026

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