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

% ***Reserved on: 08th April 2025***
Pronounced on: 28th April 2025

\+ **W.P.(C) 923/2017 CM APPL. 19216/2025**

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING .....Petitioner

Through Mr. Mohinder JS Rupal, Mr Ashok Kumar, Mr Hardik Rupal & Ms. Aishwarya Malhotra, Advocates for NCERT

versus

KUNDAN .....Respondent

Through Mr. Brijen Bhushan, Advocate for respondent with respondent in person.

\+ **W.P.(C) 928/2017 CM APPL. 19215/2025**

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING .....Petitioner

Through Mr. Mohinder JS Rupal, Mr Ashok Kumar, Mr Hardik Rupal & Ms. Aishwarya Malhotra, Advocates for NCERT

versus

ANSHUL GUPTA .....Respondent

Through Mr. Brijen Bhushan, Advocate for respondent with respondent in person.

\+ **W.P.(C) 929/2017 CM APPL. 19203/2025**

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING .....Petitioner

Through Mr. Mohinder JS Rupal, Mr Ashok Kumar, Mr Hardik Rupal & Ms. Aishwarya Malhotra, Advocates for NCERT

versus

KAILASH CHAND .....Respondent

Through Mr. Brijen Bhushan, Advocate for respondent with respondent in person

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. These writ petitions have been filed by the National Council of Educational Research and Training ('**NCERT**'), challenging the impugned award dated 18th July 2016, passed by the *Central Government Industrial Tribunal-cum-Labor Court, Karkardooma Courts, Delhi*.

2. The dispute had been raised by the respondent workmen under Section 2A (2) of the Industrial Disputes Act, 1947 ('**the Act'**), claiming continuation of services, wages for the period of unpaid work, with full back wages at the last drawn salary, along with increments.

3. Relevant service record for each of the three respondent workmen is as under:

Name of the Workman	Date of Termination	Period of unpaid work:	Last-Drawn Monthly Salary
Kundan	17th May 2013	1st April 2013 to 17th May 2013	Rs. 9,594/-
Anshul Gupta	17th May 2013	1st April 2013 to 17th May 2013	Rs. 13,500/-
Kailash Chand	17th May 2013	1st April 2013 to 17th May 2013	Rs. 8,814/-

4. The Tribunal held that the workmen had completed more than 240 days in a calendar year and that they had been working for nearly four years, and therefore, the mandate under Section 25F of the Act could not be ignored.

5. It was held that the order of discharge/termination was illegal, and therefore, the workmen were liable to be reinstated with full back wages, from 31st May 2013.

Submissions by counsel for petitioner

6. Petitioner is an entity completely funded by the Ministry of Education ('**MoE**').

7. As per the petitioner, the workmen were appointed on a contractual basis, for roles under *Multi-Task Service* ('**MTS**') and DTP operations, under a project of the MoE viz. *Sarva Shiksha Abiyan* ('**SSA**').

8. By order dated 9th June 2010, the employment of the workmen was extended.

9. It was specifically mentioned that MoE had approved the continuation of the project. It was submitted that petitioner was only an implementing agency of the project of the Central Government from time to time.

10. On 12thAugust 2011, the appointment of the workmen was further extended till 31stMarch 2012. Again, it was specifically mentioned that MoE had approved for continuation of the specific project.

11. On 7thAugust 2012, yet again, an order was passed, continuing the project till 31st March 2013. The appointment was extended due to

subsequent extensions of the SSA project granted by the MoE.

12. On 25th April 2013, an office note was generated by the petitioner, to seek continuation of the said project by MoE. However, on 13th May 2013, the project was instead outsourced to *M/s BVG India Limited* ('**BVG**'), and accordingly, the respondent workmen and other similarly situated persons, were asked to get enrolled with *BVG*.

13. The respondents/ workmen did not get themselves enrolled with *BVG*, despite requests made by the petitioner.

14. The respondents/ workmen, aggrieved by the said termination, raised an industrial dispute.

15. Petitioner's counsel stressed that the workmen themselves had filed the documents, along with the statement of claim, showing that management had recruited through *BVG* and that they were appointed under a specific project. Even during cross-examination of the management's witness, the said factum was reiterated.

16. The Tribunal also recorded that the workmen were appointed for a specific period against a specific project, but conveniently ignored that they were requested to join *BVG*, which was the outsourcing agency (after March 2013) and that other workmen, except the respondents/ workmen herein, had joined the said firm.

17. The respondents/ workmen, did not join *BVG*, with *mala fide* intention, despite admitting that they were appointed under a specific project.

18. The petitioner contended that the Tribunal committed a gross error by noting that there was "*nothing on record"* to show that further appointment was only for a specific project, despite admitted by the

workmen through their own documents.

19. The Industrial Tribunal treated the present dispute under Section 2(oo) of the Act, whereas, the dispute was covered under the *Exception* of Section 2(oo) i.e. Section 2(oo)(bb) of the Act, which excepted out terminations resulting from non-renewal of a contract of employment.

20. *Issue no. (ii)* had been framed on whether the claimants were engaged for a specific period or for a specific work.

21. In respect of this, the evidence was filed by way of affidavit, the workmen themselves exhibited documents relating to appointment.

22. However, in their cross-examination, the workmen denied all questions relating to the appointment, including, that there was a SSA project, or that there was a specific project, or that it a was project of the MoE.

23. The workmen also denied knowing about *BVG* and whether the project was still going on. The cross-examination contradicted documents filed by the respondent themselves *inter alia Ex.PW-1, PW-1/II and PW-1/VA*.

24. Quite to the contrary, the cross-examination of the management's witness reiterated that they had been recruited through *BVG*, which had been approved by the *Project Approval Board* ('**PAB**'), evident from *inter alia Ex. MW/4 and Ex. MW/6*.

25. Despite the evidence, the Tribunal did not record any finding on the specific issue and merely stated that there was "*nothing on record"* to show that further appointments were only for a specific project.

26. The petitioner's contentions may be summarized as under:

i. The workmen were appointed for a specific project, on a

contractual basis.

ii. The said project continued on a year-to-year basis, till 31st March 2013.

iii. MoE extended the project from 13thMarch 2013 till 01stApril 2014.

iv. On the approval of PAB, the management recruited several workers as MTS/DTP Operators through *BVG*. The respondent workmen were accordingly required to join the management through *BVG*, which they did not do, despite the choice given.

v. The project was ultimately closed in June 2018. The workmen employed by *BVG*, in due compliance of the order of 10thFebruary 2017, continued services till June 2018, when the said project was closed. The workers have been paid all their dues till June 2018, except for the period between 31st March 2013 to 10th February 2017, on the principle of "*no work, no pay*".

27. The Petitioner's counsel has relied upon the following decisions:

i. ***State of Rajasthan v. Rameshwar Lal Gahlot***[1]

ii. ***Netaji Subhash Institute of Technology v. Dilkhush Bairwa***[2]

iii. ***Anil Kumar Prabhakar v. Telecommunications Consultant India Ltd.***[3]

iv. ***Mahipal Singh v. National Seeds Corporation***[4]

<u>Submissions by counsel for respondents</u>

28. Refuting the submissions of counsel for the petitioner, counsel for

[1](1996) 1 SCC 595
[2]2006 SCC OnLine Del 467
[3]2010 SCC OnLine Del 1376
[4]2015 SCC OnLine Del 11191

the respondents relied upon the impugned award which had traversed the evidence and the documents and thereby granted the relief to the respondents.

29. It was contended that the appointment letter of the respondents was issued by NCERT/petitioner, and therefore, they should be considered as the NCERT's employees.

30. Their services were continuously required by the petitioner and they had been continuously working without a gap of a single day. The respondents/ workmen, worked from the date of respective appointments till the date of discontinuance on 17th May 2013.

31. No notice was given for termination of their services, despite having worked for a continuous period of 4 years (approx.). The dues were not paid, since 1st April 2013 to 17th May 2013 i.e. for a period of 46 days.

32. As an illustration, the petitioner had issued a certificate to the respondent/ workman (*Kundan*), dated 18th November 2010, certifying that his services were found as sincere, efficient and devoted. The same verified that the respondent was an employee of NCERT. Subsequent certificates dated 30th September 2011 and 17th August 2012, were also issued by the petitioner.

33. The attendance sheet for the period of 1st April 2013 to 16th May 2013 has also been appended.

34. On 10th February 2017, when the Writ Petition filed by the petitioner, first came before the Court, it was noted that the entire project-staff had been outsourced to *BVG*, and all except, the three respondents/ workmen, agreed to join *BVG*.

35. After completion of the contract, the project staff was outsourced to *M/s Impressions Services Private Limited*. It was directed by this Court that the respondents should report to *M/s Impressions Services Private Limited* on 20th February 2017 at 10:00P.M., without prejudice to the rights and contentions.

36. It is stated by the respondent that the temporary appointment was given by the agency, on 20th February 2017 till 31st March 2017, no work was assigned from 1stApril 2017. It is stated that they continued to remain in office till 5:30 P.M. every day, from 01stApril 2017 to 05th April 2017, despite that, work was not assigned to them. No appointment letter was issued.

37. Work was assigned since 6th April 2017 which was being done by the respondents/ workmen.

38. The respondents/ workmen were then told that their services are only up to 31st May 2017. It was by the respondent that the discontinuance of service since 01st April 2017 to 05th April 2017 was wrongly imposed upon them, even though they were present at work.

39. The respondents/ workmen stated they were not allowed to sign the attendance register and that the Officer who was keeping the attendance register stated "*you, all three, get out from here*".

40. There was gross non-compliance of Section 25 F, G, H and N of the Act, in this regard. No information was given to the Central Government and no notice was served upon them, prior to the termination.

41. Retrenchment compensation ought to have been paid in advance equivalent to 15 days average pay for every completed year of

continuous service, or any part thereof, in excess of 6 months, that are applicable. Additionally, no wages for 46 days i.e. for the period between 1st April 2013 to 16th May 2013 were paid.

42. Considering that they have employed persons junior to the respondents/ workmen, provisions of 25G of the Act also stand violated.

43. No opportunity was given to the respondents/ workmen for re-employment resulting in violation of Section 25H of the Act.

Analysis

44. It would be imperative to first examine the basis of the appointment of all the three respondents. As an illustration, the first appointment which was issued for the respondent *Kundan* is as under:

F.No. 3-2/RDC/2007-08
Reading Development Cell
Central Institute of Educational Technology
NCERT

Date: 03.08.2009

ORDER

On the recommendation of the Selection Committee in its meeting held on 8.7.2009, the Reading Development Cell, CIET is pleased to appoint **Mr. Kundan** as **Peon-Cum-Messenger** on a consolidated salary of Rs. 7,750/-(Rupees Seven thousand seven hundred fifty only) per month under the Sarva Shiksha Abhiyan Project w.e.f 21.7.2010 and upto 31.03.2010 on the terms and conditions as communicated to him vide this office letter of even number dated 21.07.2009.

(M. Mahadeva Swamy)
Deputy Secretary (CIET)

Copy to:

1) **Mr. Kundan, Peon-Cum-Messenger**, Reading Development Cell.
2) AO, CIET (with a spare copy) with a request to book the expenditure under the SSA project approved/sanctioned by MHRD.
3) Head, RD Cell
4) CAO, NCERT
5) PS to JD, CIET
6) Guard File

45. It is quite clear from a perusal of the above appointment that it was made for the purpose of the SSA w.e.f. 21st July 2009 and up to 31st March 2010.The same had been communicated to respondent (*Kundan*) *vide* office letter dated 21st July 2009. The order was issued by the NCERT/ petitioner.

46. The order was copied to the AO, CIET with a request to book the expenditure under the SSA project approved/ sanctioned by MoE.

47. It is, therefore, quite clear from the appointment itself that the respondent was appointed under the SSA project for a limited period and the said project was sanctioned by the MoE.

48. An order was then issued on 09th June 2010 by the petitioner, stating that the MoE had approved for continuation of the SSA project for the year 2010-2011, *vide* order dated 21st May 2010.

49. Consequently, the employment of the specified persons had been extended for a period of one year from 1st April 2010 till 31st March 2011. At serial No. 12 in this communication was the name of respondent, *Kundan* whereas respondent, *Anshul Gupta* was at serial no. 10 and respondent, *Kailash Chand* was at serial no.11.

50. On 12th August 2011, another order was issued, noting the continuation of the SSA project for the year 2011-2012, therefore, the terms of appointment for the persons included in the specified list, including the three respondents, were extended for another year.

51. Yet again, on 7th August 2012, an order was issued, stating that the SSA project had been extended for a further period of 01st April 2012 till

31st March 2013. Here as well, the three respondents were included in the list of persons whose appointments had been extended.

52. On 25th April 2013, an office order was issued by the *Early Literacy Program, Department of Elementary Education*, for continuation of the "*project staff*" for the SSA, for the year 2013-2014. The three respondents were included in the said list. A letter was issued on 30th October 2012, by petitioner to *BVG*, stating that the bid for providing human resources had been accepted and a formal contract would be executed.

53. A request was made on 15th May 2013, by the *Department of Elementary Education*, for allocating specific staff, including DTP Operators and multi-task staff for the project.

54. By letter dated 1st October 2013, the contract had been extended to *BVG*.

55. The cross-examination of the management's witness would also throw light upon whether there was consistency in the petitioner's case.

56. In the cross-examination, it is stated by the management's witness that the department had recruited several workmen as MTS, DTP operators through *BVG*, which was a private agency.

57. It was admitted that till their termination on 17th May 2013, the workmen's work was satisfactory. However, the workmen only worked till 31st March 2013.

58. It was stated that the workmen were employees of the management, prior to 31st March 2013, and thereafter, a decision was taken, that in the future, they would be employed through *BVG*. The payments were made to the workers through *BVG*.

59. The amounts which were released by the Director, by way of cheques, were not paid directly to the workmen, but were paid to *BVG*, for it to further pay salaries to the workmen.

60. The cross-examination of the workmen is interesting to note. Despite having given the documents for appointment, as noted above, the respondent *Kundan* stated in his cross-examination that his name was sponsored by the Employment-Exchange and he was initially engaged for 89 days on 21st July 2009. However, he denied knowing about SSA or whether that it was a specific project.

61. He stated that he did not know about the rules and regulations of the project and whether it formed a part of the MoE. He stated that he did not know whether it was a regular functioning project of NCERT. He stated that he was getting salary from NCERT. He did not know about the PAB.

62. It was further, stated that he did not know about *BVG* and whether the project is still going on. He stated that he attended office last on 17th May 2013 and denied that he was in the job only till 31st March 2013.

63. This is quite contrary to, not only the documents which have been supplied, but also to the fact that these respondents/ workmen, had been allocated to the SSA project, as is evident from the appointment letters and the extension letters.

64. The denial of knowledge of *BVG* is also surprising, considering in para 13 of the *affidavit of evidence* filed by the respondents/ workmen, it is stated that "*claimant has rightly denied for becoming employed through contractor M/s BVG India*"

65. In these facts and circumstances, it is surprising that the Industrial

Tribunal ignored these communications related to the appointment of the respondent and the issue of *BVG* completely.

66. In para 13 of the Award, the submissions of the representative for the Management have been categorically noted, in that, the worker (*Kundan*) was appointed on a specific project, initially for 89 days w.e.f. 21st July 2009 *vide* letter dated 03rd August 2009 and his services were extended from time to time, but since the project was over, the services were not required and, therefore, the worker was discontinued. There was no appointment on any regular sanctioned post.

67. The impugned Award then goes on to hold that the procedure under Section 25F of the Act was required to be mandatorily followed, even in the case of a casual worker or daily wager, particularly when such workmen had completed 240 days in a calendar year.

68. Further, the Tribunal was of the opinion that the work was regular and perennial in nature and required to be performed by workmen who are sincere and diligent in performance and duties and that the respondent workers fulfilled such attributes.

69. Interestingly, the Tribunal notes that the meeting of the directors on 10th April 2013, had approved the project for a further period, and "*it was expected from the management to recall the workman herein continue him in employment*".

70. In a sense, the Tribunal was also aware of the fact that the employment of the respondents had expired and it was related to the project which was then continued, yet again, for another year.

71. What is striking is the Industrial Tribunal's statement, "*there is nothing on record to show that further appointment was only for a*

specific project".

72. The communication which forms part, even of the claim petitions, is quite clear, that the said workers had been appointed as part of the SSA project. Therefore, for the Tribunal committed an error to record such a statement.

73. Before proceeding further with the analysis, it may be apposite to assess the decisions which the petitioners' counsel have relied upon:

i. In ***State of Rajasthan v. Rameshwar Lal Gahlot*** (*supra*), the Supreme Court was dealing with a worker who had been appointed for a period of three months and his appointment came to be terminated after about 11 months. The Tribunal had held that since he had completed more than 240 days, the termination was in violation of Section 25F of the Act and directed them to make fresh appointment. The relevant paragraphs of the decision are as under:

"*4. The controversy now stands concluded by a judgment of this Court reported in M. Venugopal v. Divisional Manager, LIC [(1994) 2 SCC 323 : 1994 SCC (L&S) 664 : (1994) 27 ATC 84] . Therein this Court had held that once an appointment is for a fixed period, Section 25-F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It is contended for the respondent that since the order of the learned Single Judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by the learned Single Judge as well as Division Bench are incorrect in law. When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the*

employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned Single Judge nor the Division Bench recorded any finding in this behalf. Therefore, where the termination is in terms of letter of appointment saved by clause (bb), neither reinstatement or fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned Single Judge and respondent came to be appointed afresh on 27-6-1992, he would continue in service, till the regular incumbent assumes office as originally ordered."

(emphasis added)

The Supreme Court had, therefore, underscored that once an appointment was for a fixed period, section 25F of the Act, does not apply, as it is covered by Section 2(oo) (bb) of the Act. The Supreme Court held that, unless there is a finding that power was misused or the termination was vitiated by a *mala fide* exercise, it cannot be held that termination is illegal. It has to be, therefore, established that the power was misused by the management or the appointment was not for a fixed period, or that the termination was a colorable exercise of power. The impugned award does not deal with this issue before coming to a finding that such an appointment was a colorable excise of power. The fact that it is was a fixed term appointment which was subsequently extended on a few occasions, would not make it a continuing employment.

ii. In ***Netaji Subhash Institute of Technology v. Dilkhush Bairwa***(*supra*), this Court was dealing with a workman who had been appointed in February 1991 on an *ad -hoc* basis, for six months, which was subsequently extended for a further period of six months, and then again, for a period of three months. The services were then terminated. Grievance was raised that he was appointed under a permanent post and reinstatement was sought with continuity of service and back wages. The industrial adjudicator ended up finding that the worker had been appointed under Section 2(oo) (bb) of the Act. However, the industrial adjudicator, on the basis of Section 25F, held that the management had violated the provisions, rendering the termination of service illegal.The Court stated as under:

> *9. Certain exceptions have been carried out in the enactment. In the instant case, a finding of fact has been returned by the Industrial adjudicator that the appointment of the workman was for a specific period and that the termination of his service was covered under the exception provided under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which has becomefinal. As a consequence thereof, the question which would require to be answered is the effect of such a termination and as to whether the provisions of Section 25-F of the Act would be applicable to the same. This issue has fallen for consideration before the Supreme Court in a large number of cases. The Court has also been called upon to consider the termination of the service of the workman who has been employed for the purpose of work on projects, tenure specific contracts; muster roll employment; casual labour and of workmen who*

are appointed from time to time against regular posts which actually exist in the establishment.

10. In a case entitled M.P. Electricity Board v. Hariram, the Supreme Court had occasion to examine a claim of a casual employee who was appointed on specific project work, i.e. of laying electric lines at a particular place, There was no permanent post to which they could be reinstated. The court held that such a workman could not claim entitlement to the same job which come into existence in other places or for other parts of the same project as for digging holes for installing the electric poles for the lines. It was further held that the workman could, therefore, neither claim reinstatement nor regularisation. The judgment of the Apex Court has been reported at 2004 (8) SCC 246 entitled M.P. Electricity Board v. Hariram.

In this pronouncement, the Supreme Court cited with approval its earlier decision reported at 1994 (2) SCC 323 entitled M. Venugopal v. Divisional Manager, Life Insurance Corporation of India.

.....

12. In this behalf, reference can appropriately be made to the pronouncement of the apex court reported at (2001) 5 SCC 540 entitled Harmohinder Singh v. Kharga Canteen, Ambala Cantt. In this case it was held that contracts of service which are for a fixed term, are excluded from the definition of retrenchment in the Industrial Disputes Act, 1947. It was held that where termination takes place on the expiry of the contract period or in terms of the contract, the principles of natural justice are not attracted In this behalf, reliance was placed on the earlier pronouncement of the Supreme Court in (1998) 6 SCC 538 entitled Uptron India Ltd. v. Shammi Bhan.

13. In a pronouncement of the Supreme Court reported at (1997) 11 SCC 521 entitled Escorts Ltd. v. Presiding Officer and Anr., anargument was

laid that even though a workman had been appointed on temporary basis for period of two months, it was urged that because the workman had worked for 240 days, the termination of his services amounted to retrenchment under Section 2 (oo) of the Industrial Disputes Act, 1947 and the same being in violation of Section 25 F of the Industrial Disputes Act, 1947 was illegal. The Apex Court held that it was unnecessary to go into the question whether a workman had worked for 240 days in a year inasmuch termination of services of the workman did not constitute retrenchment in view of clause (bb) in Section 2 (oo) of the Act. The termination of the services of the workman was in accordance with the stipulation contained in his contract which is to be found in his letter of appointment. Therefore, even though termination of the services of the workman was before the expiry of the period of probation, however, since the termination of the service was in accordance with the terms of the contract, it fell within the ambit of Section 2 (oo) (bb) of the statute and did not constitute retrenchment. In this regard, the Supreme Court cited with approval its earlier decision reported at (1994) 2 SCC 323 entitled M. Venugopal v. Divisional Manager, LIC.

14. Therefore, there can be no manner of doubt that this court is bound by the authoritative judicial pronouncement of law to the effect that so long as the termination of service of the workman is in accordance with the terms of the contract on or expiry of the contract, the same does not amount to retrenchment within the meaning of the expression as it is excepted under Section 2 (oo) of the Industrial Disputes Act, 1947. In these circumstances, the employer would not be required to comply with the provisions of Section 25 F of the Industrial Disputes Act, 1947.

15. Learned counsel for the petitioner has also

placed reliance on the authoritative and binding pronouncement of the Apex Court in (1996) 1 SCC 595 (para 5) entitled State of Rajasthan v. Rameshwar Lal Gahlot, it was held by the Supreme Court that termination on account of expiry of the specified period mentioned in the appointment letter would be valid, unless the same is found to be mala fide or in colourable exercise of power. In its absence, the employer could terminate the services in terms of letter of appointment. The court held that such a termination would be covered by Clause (bb) of Section 2(oo) of the Act and, therefore, Section 25-F would have no application. In 2002 (5) SCC 646 (para 15) entitled Haryana State F.C.C.W. Store Ltd. & Another v. Ram Niwas & Another, the engagement of the workman was for a specific purpose and for a particular period and disengagement was effected when the period of their appointment had expired. It was held that such disengagement was in terms of the contract of service and, therefore, not "retrenchment" within the meaning of Section 2(oo) of the Act. In these circumstances, the workman was held not entitled to any relief. In these circumstances, in the light of the principles laid down by the Apex Court in the afore-noticed judgment, Section 25-F would have no application to the facts and circumstances of the case

.....

21. Therefore, the finding of the industrial tribunal to the effect that the management violated the provisions of Section 25-F of the Act is erroneous in law in as much as Section 25-F would have no application to the case where the termination of the services of the workman is covered under the provisions of Section 2(oo)(bb) of the Statute.

(emphasis added)

iii. In ***Anil Kumar Prabhakar***(*supra*) a Co-ordinate Bench of

this Court was dealing with a workman who had raised an issue regarding termination of his services. The Industrial Tribunal held that the appointment was contractual. The Court upheld the Labor Courts conclusion and stated as under:

> "*9. Coming back to the lis as adjudicated, I am unable to accept the argument of the petitioner that owing to the petitioner having been described as a government servant in the passport or for the reason of having retained the custody of the passport in between the two contracts or for the reason of the memo regarding termination having been issued on 15th January, 1986, the petitioner can be treated as a regular employee of the respondent No. 1. The Supreme Court in Nilajkar has laid down that if the employment is in a project or scheme of temporary duration, is on a contract and not as a daily wager simplicitor, if the employment is to come to an end on the expiry of the scheme or project and/or if the workman has been apprised or made aware of the said terms, then Section 2(oo)(bb) is attracted. It was further laid down that mere appointment as a daily wager for no limited duration does not attract Section 2(oo)(bb) of the Act. In the present case, the terms and conditions in the letter of appointment of the petitioner are express. The appointment was for a period of not exceeding one year and terminable even prior thereto. There is no evidence whatsoever of the petitioner having been employed in India. The appointment was for a foreign project. There is nothing to indicate that the petitioner was not aware of and/or did not understand or comprehend the aforesaid terms. If the petitioner was treating himself as a regular employee of the respondent No. 1, it is not understandable as to why no dispute was raised by the petitioner between May, 1985 and*

September, 1985 when the petitioner was in India and was neither being assigned any work nor being paid anything. The argument of the petitioner that his statement that he was being paid during the said period should be accepted as gospel truth for the reason of the respondent No. 1 having not led any evidence also cannot be accepted. It was for the petitioner to prove the aforesaid contention. Though the case of the petitioner of payment by repatriation from London during the said time is unbelievable but even if that were to be so, it was for the petitioner to produce the documents in this regard. The Supreme Court in Shankar Chakravarti v. Brittania Biscuit Co. Ltd., AIR 1979 SC 1652 has held that in a proceeding before an Industrial Tribunal or Labour Court the obligation to lead evidence or establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It is also not as if the respondent No. 1 accepted the said statement of the petitioner. The same was challenged in cross examination. Merely because a contractual employee is issued a letter/order, informing him that his services are not required will not convert such contractual employment into a regular appointment."

(emphasis added)

iv. In ***Mahipal Singh*** (*supra*) a Co-ordinate Bench of this Court was dealing with an issue of termination of services of the petitioner, and whether it was a case under Section 2(oo) of the Act or whether Section 2(oo)(bb) would have any application. The petitioner was appointed in March 1984 by the respondent with no appointment letter given to him. He worked for more than two years and, therefore, claimed that he was to be treated as a regular employee, but

his services were terminated in April 1986, with no compensation or notice. The Court examined provisions and noted as under:

> "*12. On a plain reading of the statutory provision, it is clear that any termination of service of a workman by the employer for any reason whatsoever comes within the meaning of the expression 'retrenchment' as defined in Section 2(oo) of the Act. The section, however, provides certain exceptions to the wide and comprehensive definition of the term 'retrenchment'. The exceptions are:*
>
> *"1) Termination of appointment inflicted by way of disciplinary action*
>
> *2) Voluntary retirement of the workman*
>
> *3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
>
> *4) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employment and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, or*
>
> *5) termination of the service of a workman on the ground of continued ill-health."*
>
> *13. It follows therefore that if the case of termination of the workman comes within any of the exceptions enumerated in the section then the said termination will not be a case of 'retrenchment' within the meaning of Section 2(oo).*
>
> *15. The basic submission of the learned counsel for the petitioner challenging the Award is that the petitioner worked for more than 240 days in the 12*

calendar months preceding the date of his termination which fact was also noted by the Tribunal and neither there was any denial by the respondent in this regard in the written statement nor any evidence was led by the respondent. Admittedly, the provisions u/s 25F of the Act were not complied with. Therefore, the termination of services of the workman was in violation of the mandatory provisions of the Act. The counsel further submits that the finding has been given by the Tribunal that the petitioner has completed 240 days preceding the date of his termination which finding has not been challenged by the Management. Therefore, the onus shifts on the management to prove that the termination of the petitioner was legal.

17. He further submitted that the appointment of the petitioner was for a fixed period and for specified work which is covered by Section 2(oo)(bb) of the ID Act, hence, if after the specified work was over and he was terminated, such termination is not illegal.

18. Reliance was placed on the following cases:-

(i) State of Rajasthan v. Rameshwar Lal Gahlot, AIR 1996 SC 1001

(ii) Haryana State FCCW Store Ltd. v. Ram Niwas, AIR 2002 SC 2495

(iii) Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh, AIR 2006 SC 56

(iv) Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1

(v) Punjab State Electricity Board v. Sudesh Kumar Puri, (2007) 2 SCC 428

(vi) M.D. Karnataka Handloom Dev. Corpn. Ltd. v. Mahadeva Laxman Raval, AIR 2007 SC 631."

(emphasis added)

v. The Court notes the decision of the Supreme Court in ***State of Karnataka v. Umadevi (3)***[5] where it was observed as under:

"*45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for 'some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible,*

[5](2006) 4 SCC 1

given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or

> *procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.*"
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> (emphasis added)

74. The Court, therefore, disagrees that there was retrenchment, considering the exception in clause Section 2(oo) (bb) of the Act. It is also noted that it is a matter of record, that the project was completed on 30th June 2018; a Notification dated 29th June 2018 has been handed up to the Court.

75. Considering the appointment letter which categorically stated that they were being engaged for a period of one year for SSA project and that the same was continued for the next couple of years, till handing over the supply of services to *BVG* and that the project finally concluded on 30th June 2018, it cannot be denied that indeed there was a project which subsisted for a finite period of time.

76. It would thus, be difficult to accept the Tribunal's finding that

there was nothing on record to show that the further appointments were not for a specific project, which is the premise on which the Tribunal has passed the award in favor of the worker.

77. The bald denial by the worker, in his cross- examination, despite having filed the documents which clearly stated so, is also a testament to the fact that a case was being created by the worker, despite having known the terms of their engagement, which were contractual and for finite periods of time and connected to a particular project.

78. There could not have been a case by the worker that they were appointed through a recruitment process, in a regular post, for the NECRT, and therefore, the provisions of Section 25F Act would not be applicable.

79. The appointment was clearly contractual in nature and, therefore, the provisions of Section 2(oo) (bb) would be applicable, as an exception, to the provision for retrenchment.

80. An ameliorative option had been given by the management, for the respondents/ workmen, to resume work under *BVG*, however, they have refused to accept.

81. Even by order dated 10th February 2017, the Court had directed the respondents to join service through *M/s Impressions Services Private Limited*, however, despite having joined, their services were discontinued.

82. It is also noted that other similarly placed workers had joined through *M/s BVG India* and completed their services till the project was concluded in 2018

83. Considering that Section(s) 25F, 25G, 25H and 25N, all apply to

"*retrenchment*" which is defined under Section 2(oo) of the Act, the said will not be applicable, once this Court has reached a conclusion that this is not case of retrenchment but is a case falling under Section 2(oo) (bb), where termination of service was a result of expiry of the contract or a non-renewal of the same.

84. It is evident that the management had discontinued the process of engaging workers on a contractual basis, for SSA project and instead had outsourced it to *BVG*.

85. It cannot be expected for the NCERT to be forced to continue their services, considering that the contract had expired. The option which was given for them to join *BVG* was not availed by them, at their own peril.

86. At this stage, it would be apposite to advert to the decision of a Division Bench of this Court in ***Dinesh Kumar v. Central Public Works Department***[6], wherein the Court referred to various decisions of the Apex Court to demarcate the jurisdiction/ scope of interference by this Court, in its exercise of powers under Articles 226-227 of the Constitution of India, against an award passed by an Industrial Tribunal. In this regard, the Court observed as under:

> *11. The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245, has held as under:*
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> *"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully,*

[6]2023 SCC OnLine Del 6518

that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken… … The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

12. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

…

14. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan, (2005) 3 SCC 193, the

Apex Court, held that the Labour Courts/Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

16. In a Constitution Bench judgment of the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, the Apex Court has inter alia held as under:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the

record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of

certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

17. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

18. The Hon'ble Supreme Court in State of Haryana v. Devi Dutt, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court

has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

(emphasis added)

87. In view of the aforesaid position of law, this Court finds that in light of; ***firstly***, the appointment letters issued to the respondents; ***secondly***, communications issued to the respondents; ***thirdly,*** documents on record; ***fourthly***, cross-examination of the parties; the finding of the Tribunal, that there is '*nothing on record*' to show that the employment of the respondents was for a specific period/ project, which forms the basis of the passing of the impugned awards, cannot be sustained. The Tribunal clearly ignored or omitted to appreciate the most critical documents in relation to the essential crux of the matter and reached a conclusion on extraneous considerations.

88. Accordingly, the respective impugned awards in ***W.P.(C) 923/2017***, ***W.P.(C) 928/2017***, ***W.P.(C) 929/2017*** are set aside.

89. Pending applications, if any, are rendered infructuous.

90. Judgment be uploaded on the website of this Court.

CM APPL. 19216/2025 in W.P.(C) 923/2017, CM APPL. 19215/2025 in W.P.(C) 928/2017 & CM APPL. 19203/2025 in W.P.(C) 929/2017

1. Directions as regards costs, to be paid by the petitioner, as per order dated 20th February 2025, shall be complied with.

2. Applications are disposed of.

(ANISH DAYAL)
JUDGE

APRIL 28, 2025 /RK/*kp*