

\$~4

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

%

Date of Decision: 11th March, 2020

+ W.P.(C) 6562/2010 & CM APPL.No.53951/2018

UTTAR PRADESH SAMAJ (SOCIETY) & ANR..... Petitioners

Through: Mr.R.K.Saini, Mr.Ankit Singh, Ms.Tavishi
Vats and Ms.Bhavana Jain, Advocates

versus

RAMESH KUMAR BAWALIA Respondent

Through: Mr.Raju Gupta, Advocate
Ms.Raavi Birbal, Advocate (Amicus
Curiae)

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioners have challenged the award of the Labour Court whereby the Labour Court set aside the termination of the respondent and granted him reinstatement with 80% back wages.
2. The petitioners appointed the respondent as a Lab Attendant on probation for one year on 16th June, 1993. The probation period was extendable by one year.
3. Vide letter dated 3rd June, 1994, the petitioners terminated the respondent before the completion of the probation period of one year by giving one month notice whereupon the respondent raised an industrial dispute which was referred to the Labour Court.

4. The petitioners contested the claim on the ground that the termination during the probation does not amount to retrenchment. The petitioners also pleaded that the respondent was not punctual and sincere in his duties and was warned several times before the completion of probation period and the memos were issued to him on 25th May, 1994 and 3rd June, 1994.

5. Learned Labour Court rejected the petitioners' contentions and held termination of the respondent to be violative of Section 25F and 25G of the Industrial Disputes Act.

6. Learned counsel for the petitioners urged at the time of the hearing that the termination of a probationer during the period of probation does not amount to retrenchment under Section 2 (oo) of the Industrial Disputes Act and therefore, Section 25F would not be attracted. Reference is made to *M/s Deccan Charters Pvt. Ltd. v. Sarita Tiwari*, 2019 SCC OnLine Del 9826 and *Nitya Nand Sinha v. M/s.H.L.Promoters Pvt. Ltd.*, 2019 SCC OnLine Del 11775.

7. Learned counsel for the respondent urged at the time of the hearing that the termination of respondent was in violation of the provisions of the Industrial Disputes Act.

8. Ms.Raavi Birbal, learned amicus curiae submits the termination of a probationer during the period of probation does not amount to retrenchment under Section 2 (oo) of the Industrial Disputes Act and, therefore, Section 25F and 25G of Industrial Disputes Act would not be applicable. Learned amicus curiae further submits that termination of probationer found unsuitable for the job, does not amount to punitive termination. Reference is made to *M.Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, AP*, (1994) 2 SCC 323, *Escorts Ltd. v. Presiding*

Officer, (1997) 11 SCC 521, *Saraswati v. Press Trust of India*, 2016 SCC OnLine Del 929, *Kalyani Sharp India Ltd. v. Labour Court No.1, Gwalior*, AIR 2002 SC 300, *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr.Pandurang Godwalkar*, AIR 1993 SC 392, *Unit Trust Of India v. T. Bijaya Kumar*, (1993) 1 LLJ 240 and *Birla VXL Ltd. v. State of Punjab*, AIR 1999 SC 561.

9. The law with respect to the termination of service of a probationer is well-settled that termination of a probationer during the period of probation does not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. In *Deccan Charters* (supra) and *Nitya Nand* (supra), this Court summarized the principles laid down by the Supreme Court in *M.Venugopal* (supra), *Escorts Limited* (supra), *Kalyani Sharp* (supra) and the Division Bench of this Court in *Mahinder Singh Vs. Indian Airlines Ltd*, 2016 SCC OnLine Del 5008.

10. Applying the aforesaid well-settled principles to the present case, this Court holds that the termination of the respondent who was not found suitable during the probation period, does not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and, therefore, Section 25F and 25G of Industrial Disputes Act are not applicable.

11. The writ petition is allowed and the impugned award is hereby set aside. Pending application is also disposed of.

12. This Court appreciates the assistance rendered by learned amicus curiae, Ms. Raavi Birbal in this matter.

13. Interim order dated 15th October, 2015 is vacated. The FDR deposited by the petitioners be returned back to the petitioners.

14. Copy of this judgment be given *dasti* to learned counsel for the parties under signatures of the Court Master.

J.R. MIDHA, J.

MARCH 11, 2020

mamta

