

2. The foundation of Applicant's claim is that he has been working as Badli Worker in the establishment of Respondent. By virtue of his status as Badli Worker, he is entitled for being listed as a Badli Worker, to be called as and when due to absence of regular employee job for a Badli worker becomes available.

3. Relevant and crucial pleadings contained in O.A. read as follows :

6.3 The Petitioner states that so far as the Respondent is concerned it has maintained seniority list of Badli employees working on 29 days basis. The Petitioner states that although he has worked as Badli employee with the Respondent during the aforesaid period, name of the present Petitioner is not included in the seniority list of Badli employees.

(Quoted from Page 3 of Paper-book)

6.8 The Petitioner states that apart from the aforesaid order and judgment passed by this Hon'ble Tribunal, there are various orders passed by this Hon'ble Tribunal from time to time pertaining to the establishments of G.T. Hospital, Cama and Albles Hospital by which directions have been issued to the concerned authorities to first ascertain as to whether or not the concerned Class-IV employee has worked in the past as Badli employee and then include his name in the seniority list of Badli employees. The Petitioner shall crave to refer to and rely upon the orders passed by this Hon'ble Tribunal in that regard as and when produced.

(Quoted from Page 4 of Paper-book)

7.1 The Petitioner submits that having worked as Badli employee right from the year 1998 till the year 2000, the Petitioner is entitled to have his name included in the seniority list of Badli employees."

(Quoted from Page 5 of Paper-book)

4. These averments have been replied by the State as under :

6. With reference to contents of Paragraph No. 6.3, it is submitted that the present Applicant remained absent for long period since the year 2000 till filing of this application without any prior intimation to the Respondent. Hence the Respondent did not include Applicant's name in the seniority list of Badli employees.

(Quoted from Page 28 of Paper-book)

11. With reference to contents of Paragraph No.6.8, it is submitted that the Respondent prepared the proposal of regularization of 29 days Badli employees in which excluded the names of Badli employees on following grounds.

- 1)Deaths
- 2)Absence for long period
- 3)Regularized in other department
- 4)Overage
- 5)Regularized on compassionate ground."

(Quoted from Page 29 of Paper-book)

14. With reference to contents of Paragraph No.7.1, I say that the contents thereof have been dealt with in para 11 of this Affidavit."

(Quoted from Page 30 of Paper-book)

5. The averments contained in Para No.6 of reply quoted in foregoing Para No.4 have not been denied or explained by the Applicant by filing Rejoinder.
6. In view of pleadings in O.A. and the reply, it is thus evident that the Applicant who has failed to remain present for serving on a locum vacancy arising on each day, whenever a permanent employee does not report for duty, is not availed by the Applicant from 2000 till filing of the O.A.
7. The very concept of 'Badli Worker' as has emerged in service jurisprudence, is of being available to join and work on each occasion of absence of a regular employee to let the work go on in order to conserve working conditions in Hospital. A Badli Worker gets entry for a day's work. It is optional for a Badli Worker to remain present on each day on his own volition to avail a fortuitous opportunity to work and earn the day's wage.
8. A Badli Worker who does not remain present and that too, for a long duration of 18 years, by his own act extinguishes his right of getting a Badli job.
9. Enrolment as a Badli job is thus a concession arising out of the peculiar circumstance of non-reporting by a regular workman or employee. There cannot be a Badli worker who can enjoy the concession perpetually as if he has a right which being perpetual ought not to be extinguished or terminated.
10. A voluntary prolonged absence is voluntary relinquishment of job.
11. In the result, the O.A. does not merit any interference and is dismissed.

Sd/-

(P.N. Dixit)
Member-A

Sd/-

(A.H. Joshi, J.)
Chairman

Mumbai

Date : 26.09.2018

Dictation taken by :

S.K. Wamanse.