

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-I, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 253/2018

Date of Passing Award- 02/06/2022

Between:

Shri Sachin Chauhan,
S/o Late Shri Rajesh Chauhan,

Through:- S. S Upadhayay,
President Ashok Hotel Mazdoor Janta Union,
Ashok Hotel Staff Qtr No. C-47, Chanakya Puri,
New Delhi-110021.

Workman

Versus

The Management of Ashok Hotel,
50-B, Chanakya Puri,
New Delhi-110021.

Management

Appearances:-

Shri S.S Upadhayay
(A/R)

For the claimant

None for the management
(A/R)

For the Management

A W A R D

This is a complaint filed by the claimant seeking a direction to the management to treat him to be on duty grant continuity of service and back wages w.e.f 29.04.2007.

The claimant in this petition has stated that he was working in the management as the Coffee Shop waiter since 01.09.2009. The management of Ashoka Hotel was not granting him the pay scale at par with the regular employees. Thus, he had approached the Ashoka Hotel Mazdoor Janta Union for advancing the claim of regularization of service with regular pay scale etc. The union filed a statement of claim before the Regional Labour Commissioner (Central) Delhi. A conciliation was taken up and the commissioner referred the matter to the appropriate government for onward reference to the Central Government Industrial Tribunal. While the matter stood thus, and when the matter was pending before the Ministry of Labour the management in gross violation of section 33 of the Id Act terminated his service by letter dated 08.05.2017. The claim of the present claimant was in serial no. 28 of the claim filed before the Labour Commissioner. The claimant was working in the Coffee Shop in the management from the date of his initial appointment and till the termination under the direct supervision

and control of the officials of Ashoka Hotel. As per Ashoka Hotel certified standing order the claimant is entitled for regularization of service when he completes 12 months of work continuously. The management of Ashoka Hotel instead of regularizing the service and in order to deprive him of his legitimate rights has introduced a contractor which is a sham contract and paying the wage through the said contractor. Hence, in this application the claimant has stated that the order of termination since has been passed during the pendency of an industrial dispute the same is nonest and the management be directed to take him into service from the date of termination accept the continuity of his service and pay him the full back wage.

Notice was served on the management. The A/R for the management had appeared on 30.11.2018 and prayed for adjournment to file WS. ON that day the copy of the claim statement was supplied to him and time was allowed. Thereafter 7 adjournments were allowed for the purpose. Since, no WS was filed by order dated 12th February 2020 the management was proceeded exparte and the exparte evidence was recorded.

The claimant examined himself as WW1 and filed a number of documents marked in a series of WW1/1 to WW1/20. These documents include the certificate of participation of the claimant in the training programs conduct by the management the salary slip of different months the duty pass, security pass, and the representations made from time to time demanding regularization of service. These documents have been filed to prove that the claimant was working under the management under their control and supervision. The witness was not cross examined.

During course of argument the Ld. A/R for the management by citing the judgment of the Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Limited vs. Ram Gopal Sharma and others** and in the case of **Kanpur Electricity Supply co. Ltd. vs. Shamino Mirza 2009LLR 226 (SC)** argued that when the management having knowledge about the pendency of the Industrial dispute terminates the service of the workman in clear violation of section 33 of the Id Act and the proceeding is initiated in terms of section 33A of the said Act, and it is proved that the management had not obtained the permission before the termination, the said action of the management shall be treated as if not in existence and the claimant or victim workman should be restored to his original position on the date of termination. The law is well settled that the conditions contain in the proviso to 33(2) of the Act is mandatory and non compliance of the same would rendered the order of dismissal or discharge etc void or inoperative. In the case of Jaipur Zila Sehkari Bank referred supra as well as in the case of **Telephone Industry Limited vs. Prabhakar H Manyare 2003 LLR 68** it has been held that when the management terminates the service of the workman during the pendency of the Industrial dispute without any approval from the competent authority the same shall become void. In this case since, the management opted not to contest there is

absolutely no evidence on record to presume that the permission in terms of section 33 of the Id Act was taken by the management before termination of service of the claimant.

As per the claim statement the claimant was working as a casual employee and demanding regularization. During the pendency of the Industrial dispute his service was terminated. In the case of **Deepali GUndu Suarwase vs. Kranti Junior Adhyapak Mahavidyala (2013)10SCC 324** the Hon'ble Supreme Court have held that in cases of wrongful termination of service the reinstatement with continuity of service and back wages is the normal rule. Here is a case where the claimant has adduced uncontroverted evidence that he was under the employment of the management since 01.09.2009 and working as a waiter in its coffee Shop. He was getting remuneration from the management and working under its supervision and control. But his service was illegally terminated w.e.f. 29.04.2017. The claimant has further stated that since the date of termination he is unemployed.

Having regard to the legal position as discussed above and the fact that the claimant was performing the duty as a casual employee of the management he is held entitled to reinstatement into the post with 50% back wage in as much as the termination of the claimant is per-se illegal and the claimant is not gainfully employed anywhere since the date of termination. The claim petition is accordingly answered. Hence, ordered.

ORDER

The complaint filed by the claimant is allowed. The termination of his service during the pendency of the Industrial dispute by the management is held to be illegal. It is directed that the claimant shall be reinstated into the service/post in which he was working on the date of termination and be paid 50% of the back wages according to the last drawn wage. The management is further directed to reinstate the claimant into service within 3 months from the date of publication of the award and pay his arrear back wage @50% of the last drawn wage within one month from the date of reinstatement failing which the amount accrued shall carry interest at the rate of 9% from the date of accrual and till the payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
2nd June, 2022

Presiding Officer.
CGIT-cum-Labour Court.
2nd June, 2022