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. 78/2014

Date of Passing Award- 12.04.2022

Between:

Shri Mansoob Ali,
S/o Shri Mehboob Ali,
R/o 341/37, Zakir Nagar,
New Delhi-110025. Workman

Versus

M/s Bharti Airtel Services Limited,
Through its Manager/Director,
Aravali Crescent,
1st Nelson Mandela Road,
Vasant Kunj, Phase-II,
New Delhi-10070. Management

Appearances:-

Ms. H R Sharma (A/R) For the claimant.

Shri Kartik Bhardwaj (A/R) For the Management

A W A R D

This is an application filed u/s 2A of the Id Act by the claimant challenging his termination of service by the management as illegal and seeking the relief of reinstatement into service, payment of back wages and compensation.

In the claim petition the claimant has stated that he was employed with M/s Bharti Airtel Services Limited at Aravali Criscent Vasant Kunj Phase II New Delhi as a F R Engineer Band SI w.e.f 25.09.2007. His last drawn salary was Rs. 10000 per month. While the matter stood thus, in the month of March 2010 the management M/s Bharti Airtel Services Limited was amalgamated with M/s Alcatel. Unfortunately the claimant fell ill and was under medical care at Lion Hospital and Moolchand Hospital from 29.11.2008 to 17.12.2008. His absence was duly intimated to the management and as per the prevailing practice and rules of the company medical leave was sanctioned in his favour and the treatment expenditures were sanctioned by the Insurance company after verifying his employment and leave status. After treatment the claimant reported for duty on 18.08.2008 but the management refused to take him on duty and informed

that his service has been terminated for unauthorized absence. The workman made several visits to the office of the management requesting to take him back into service. He also requested for an experience certificate and release letter which too was refused. On the contrary he was forced to sign several blank papers including a letter of resignation without settling the account and clearing the dues of the claimant. This was so done in connivance of the management with other companies to remove substantial number of employees from employment. Though the medical reimbursement was allowed and the medical leave was granted the management took a wrong view of the matter and illegally terminated his service. Finding no other way the claimant workman served a legal notice on the management on 08.07.2009. The notice though was received, the management least bothered to reply the same. The workman became a victim of the situation and filed a civil suit bearing no. 676 of 2010 before the Senior Civil Judge Delhi. Later on the said suit was withdrawn by the claimant on 20.05.2011 and the court granted him liberty to approach the appropriate forum. The workman thereafter filed a claim petition before the labour commissioner Hari Nagar New Delhi which was disposed of on the ground of lack of jurisdiction. The claimant then approach the Chief Labour Commissioner Delhi where a conciliation proceeding was initiated. Since, no conciliation could be effected and 45 days elapsed, the claimant came up with the present petition seeking the relief of reinstatement, back wages and compensation for the act of illegal termination of his service by the management.

Being served with the notice the management M/s Bharti Airtel Services Limited filed WS. In the said WS the management admitted that the claimant was in the service of the management till he voluntarily left the service on receipt of full and final settlement of the dues. The management has pleaded that the claimant has misrepresented the fact before the tribunal to derive some illegal benefits. It has been admitted that M/s Bharti Airtel Services Limited amalgamated with M/s Lucent Network Management Service Limited in the month of March 2010. The company directed and deputed some of its employees to work in the new company. However, the workman was not included in the said list for his resignation and processing of his financial benefits in full and final settlement of the dues. An amount of Rs. 4069.75/- was paid to the claimant towards final settlement. The management has denied that on account of the business policy the service of the claimant was terminated, but the claimant himself left the service of the management after taking his full and final dues. Thus, the management has emphatically pleaded that the service of the claimant was never terminated and as such the question of illegal termination doesn’t arise. The other stand of the management is that the claimant is not unemployed on account of termination of service. Rather he had left the service of the management after receiving full and final settlement and for a better carrier. The stand of the claimant that injustice was done to him for the illegal termination rendering him jobless is illegal. Thereby the management has pleaded for dismissal of the claim.

The claimant filed replication stating therein that the stand taken by the management is false. It is also denied that the claimant voluntarily left the service of the management for the better prospect after receiving the full and final settlement. It has been stated that the management forcibly stopped the claimant from doing his services which amounts to termination of service. The claimant has specifically denied about the settlement of claim between him and the management. The other stand of the claimant is that the management is alleging falsely about his gainful employment. Infact the claimant is now jobless.

On these rivals pleading the following issues were framed for adjudication.

ISSUES

1. Whether the service of the claimant has been terminated illegally as alleged.
2. Whether the claimant was ill during the period 29.11.2008 to 17.12.2008.
3. Whether the claimant had voluntarily left the service after receiving full and final settlement.

To substantiate their respective stand the claimant testified as WW1 and proved a series of documents marked as exhibit WW1/1 to WW1/26. Besides that the claimant also examined another witness namely Rajesh Singh. These documents include the correspondences made between the claimant and the management, the letter of appointment issued by the management and the documents showing sanction of medical leave and sanction of the expenses for reimbursement. The other witness examined by the claimant as WW2 is an employee of Raksha Health Insurance TPA Pvt. Ltd. who has testified to the effect that a medical insurance was issued to the claimant and after perusal of the documents produced by him the claim was settled. The document has been proved as WW2/M1. Similarly one of the officer of the management testified as MW1 and produced few documents. 2 documents which have already been marked as WW1/7 and WW1/8 are relied by him to prove that the claimant had left the service voluntarily after receiving full and final settlement.

At the outset of the argument the Ld. A/R for the management submitted that the claimant since has alleged illegal termination of his service leaving him jobless, the entire burden lies on him to prove the allegations. But the claimant has not filed and document to prove that his service was terminated by the management and no evidence has been placed on record to prove that the action of the management has rendered him jobless. Describing the claim as false and frivolous the Ld. A/R for the management submitted that the claim is liable to be rejected for suppression of material facts. The counter argument of the claimant is that this is a typical case of unfair labour practice and victimization of the claimant in the hands of a mighty employer. It is not the claimant who is suppressing the facts but the management is guilty of misleading the tribunal by suppressing material facts. Thus, on behalf of the claimant it is argued that the burden

has been properly discharged by the claimant and the primary burden being discharged the same shifts on to the management and in this case the management has miserably failed to discharge the said burden to prove that the claimant left the service after full and final settlement and he is gainfully employed.

FINDINGS

ISSUE NO.2 and 3

On perusal of the statement of claim and the written statement it is evidently clear that the claimant was in the employment of the management M/s Bharti Airtel Services Limited from 25.09.2007 to 28.11.2008. It is admitted by both the parties that the claimant's relationship with the management came to an end w.e.f 28.11.2008. Whereas the claimant describes this date as the date of illegal termination the management has explained that the employer and employee relationship between the management and the claimant came to an end on that date when the claimant voluntarily left the job after receipt of full and final settlement. In his sworn testimony the claimant has stated that pursuant to the amalgamation the management issued a list of employees who were directed to work in the new company i.e M/s Alcatel Limited. The name of the claimant was not included in the said list. The witness examined on behalf of the management who is none other than the Assistant Manager of the company has stated during his cross examination that the name of the claimant was not included in the list as he had voluntarily left the job on receipt of full and final settlement. He further stated that this is not a case of termination but quitting the job by the claimant. Basing on this evidence the Ld. A/R for the management argued that the claimant since alleges termination bears the responsibility of proving the same. By drawing attention of the tribunal to the cross examination of the claimant recorded in this proceeding he submitted that had it been a case of termination the letter of termination would have been served on the claimant or the claimant would have alleged the matter before the labour inspector or would have made correspondence with the officials of the management company. The claimant during cross examination has admitted that he never wrote letters to the management alleging the termination and requesting reinstatement, but explained that on several occasions he met the officials personally and requested to take him into service. But his request was never acceded to.

Now it is to be seen if the claimant has been able to prove the alleged termination on the set evidence adduced during the proceeding.

The definition of retrenchment as has been laid down u/s 2(oo)of the Id Act means termination by the employer of the service of the workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action and shall not include voluntarily retirement of the workman. Thus, it is now it is to be seen if the service of the claimant was terminated by the employer. Admittedly the claimant was not served with

any letter of termination or notice of termination. It is also not the case of the claimant that termination compensation was paid to him. It is also not disputed that the claimant had not made any representation to the management requesting reinstatement into service. The cessation of employer and employee relationship between the parties w.e.f 28.11.2008 is admitted by both the parties. The claimant in his statement on oath has stated that he never requested for reinstatement as the termination in the formal sense never happened. Though, he went on requesting orally for work, the same was not accepted. The management has on the contrary pleaded about the voluntary quitting of the job.

Admittedly the management is a big company having a wide network of service. As such it is expected of the management to maintain all kind of record in respect of its employees. In this case the claimant has successfully discharged the primary burden to the effect that his employee relationship with the management came to an end w.e.f 28.11.2008 when the management refused to take him into service. Thus, now it is incumbent upon the management to prove if the said severance of status was for termination of service or for the voluntarily quitting by the claimant. Besides examining one of the Assistant Manager as a witness the management has produced the salary slip of the claimant for the month of November 2008 and another computer generated calculation sheet in which at the top it has been mentioned as the full and final settlement of the claimant. These documents marked as WW1/7 and WW1/8 by the claimant has been accepted by the management and confronted to the claimant. Besides these document no other paper has been placed on record by the management. It is the stand of the management that when the company Bharti Airtel merged with another company the claimant opted out of the employment for a better prospect and received the full and final settlement. But surprisingly no document has been placed to make this tribunal believe that before payment of full and final settlement a formal decision to that effect was taken by the management. It is surprising to note that the management though throughout pleaded and argued about payment of some amount towards full and final settlement, during cross examination the claimant was asked whether he received 4069.75/-towards net salary payable. Of course the claimant gave an indecisive statement about the same. But that will not exonerate the management of its responsibility of proving that the full and final settlement amount was paid to the claimant. The document having the caption full and final settlement only reveals that Rs. 4069.75/- was paid to the claimant for net salary payable. The rest part of the document is with regard to the income tax calculation. This document nowhere shows that the amount paid to the claimant on 29.11.2008 was towards full and final settlement. In this document though 29.11.2008 has been shown as the date of resignation, no document or evidence to that effect has been filed by the management. The oral evidence of the management witness about the voluntary quitting of the claimant cannot be accepted as proof since the companies like Bharti Airtel is supposed to maintain detail records of the employees working, quitting or

retiring alongwith the details payable and paid to them. Thus, the stand of the management that the claimant had voluntarily left the job after receiving full and final settlement stands disproved. These issues are accordingly answered against the management.

ISSUE No.1

Now it is to be seen whether the claimant's service was illegally terminated and he was made a victim of unfair labour practice. The management has admitted that the claimant was the permanent employee of the management. While answering issue no.2 and3 it has already been held that the cessation of the service of the claimant was not the case of voluntary quitting but termination. Section 25F of the ID Act clearly provides that no workman employed in any Industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month notice in writing indicating the reason for retrenchment or the workman has been paid in lieu of the notice, wages for the period of notice and retrenchment compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in access of 6 months. Here is the case where the management has admitted not to have served retrenchment notice, notice pay in lieu of notice or the retrenchment compensation on the plea of voluntarily quitting by the workman. But for the discussion made in the preceding paragraph and for the appreciation of both oral and documentary evidence it is held that the management at the time of terminating the service of the claimant had clearly violated the provisions of section 25F of the ID Act and the claimant is entitled to the compensation and relief for the same.

During course of argument the Ld. A/R for the management advanced the stand that the claimant has been gainfully employed and on that ground alone he is not entitled to compensation as claimed by him. He also argued that the burden lies with the workman to prove that he is not gainfully employed and to do so he had to plead the same specifically and adduce evidence. To support his stand he has relied upon the judgment of The Hon'ble High Court of Delhi in the case of **Thakur Singh Rawat and others vs. Jagjit Industry Limited (Manu/DE/1690/2004)** and submitted that it is always incumbent upon the workman to prove that he is not gainfully employed. This argument of the management is again found unacceptable since, it is a common and standard procedure of law that a party asserting existence of a particular fact bears the burden of proving the same. But a party cannot be called upon to prove non existence of a particular fact. The claimant in this case has pleaded in the claim petition and in the rejoinder that the action of the management in not accepting his service rendered him jobless. While deposing as a witness under oath the claimant has also reiterated the same. Thus, the primary burden being discharged, by the claimant the same now shifts on to the management to prove that the claimant is gainfully employed. The same view has been taken

by the Hon'ble High Court of Delhi in the case of Thakur Singh Rawat referred supra and relied upon by the management. In paragraph 19 the Hon'ble Court have clearly stated that:-

> "The state of employment or non employment of the workman is within the special knowledge of the workman and therefore it should be his first duty to make an assertion that he was unemployed. Having so asserted in this statement of claim he may even state on oath about his state of unemployment and nothing more is required to prove his side of the case. It will then for the management to assert or prove if the workman was at all employed."

In this case the claimant through his pleading and statement under oath has proved that he is unemployed. But the management has miserably failed to prove that the workman is employed. Hence, it is concluded that the claimant had never voluntarily quit the service of the management on receiving full and final settlement. It is also not proved that after leaving the employment of the management he has been gainfully employed. This issue is accordingly answered against the management.

Now the question left for decision is about the relief the claimant is entitled to. In the claim petition the claimant has prayed for reinstatement into service with full back wages and compensation. The Ld. A/R for the management by placing reliance in the case of **General Manager Haryana Roadways vs. Rudhan Singh decided by the Hon'ble Supreme Court of India in Appeal (Civil) 7501 of 2002** submitted that there is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of section 25F of the Id Act, the entire back wages should be awarded. The factors like the manner and method of selection, and whether he was in adhoc, short term, daily wage, temporary and permanent nature, special qualification etc should be weighed and balanced in taking a decision. He thereby argued that the claimant was in the employment of management for 1 year and 2 months i.e. from 25.09.2007 to 28.11.2008. As such no order should be passed for the back wage claimed.

The claimant argued that he was subjected to unfair labour practice and the management has resisted the same. The provisions of section 2(ra) read with schedule V of the ID Act, the discharge or dismiss of a workman by way of victimization or not in good faith but in colourable exercise of the employer's right amounts to unfair labour practice. The evidence in this case clearly shows that after amalgamation of Bharti Airtel with M/s Lucent Network Management Services in March 2010 some of the employees were allowed to work in the new company whereas, the claimant was denied and the management witness during cross examination has admitted that no reason was assigned for his discontinuance. Thus, it is held to be a clear case of Victimization on account of unfair labour practice. Now it is to be

examined what relief the claimant can be granted. In the case of **General Manager Haryana Roadways** referred supra the Hon'ble Supreme Court have held that one of the important factor which need to be considered for grant of relief is the length of service the workman had rendered. If the workman had rendered a considerable period of service and his service was wrongfully terminated he may be awarded full or partial back wages keeping in view the fact that at his age and qualification he may not be in a position to get another employment. In this case the claimant had worked for the management for 1 year and 2 months and it is not proved that he is gainfully employed. Thus for none compliance of the provisions of section 25F he is entitled to the retrenchment compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months which comes to 1 year service. In addition to that the claimant is also held entitled to one month notice pay. The alleged termination happened in the year 2008 and after almost 13 years the litigation has come to an end. In the mean time the claimant must have crossed the age of getting the employment anywhere else. Hence, he need to be compensated for the loss of job on account of unfair labour practice meted to him.

In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workman lost his job for the unfair labour practice and keeping his victimization in view it is felt proper to issue a direction to the management to pay him compensation and other statutory entitlement in lieu of reinstatement since, the company in which the claimant was working has merged with another company in the meantime. Hence, ordered.

ORDER

The claim petition be and the same is allowed in favour of the workman. It is held that the action of the management in terminating the service of the claimant amounts to unfair labour practice and the said termination was made in clear violation of the provisions of section 25F of the ID Act. The management is thus, directed to pay one month last drawn salary as the notice pay, in lieu of one month notice, pay the amount equivalent to 15 days salary for 1year of service. In addition to that the management shall pay Rs. 5,00000/- as a lumpsum compensation to the claimant for the illegal termination of service in lieu of reinstatement and back wages. The management is further directed to pay this amount to the claimant within 3 months from the date of the publication of the award failing which the amount shall carry interest @9% per annum from the date of alleged illegal termination and till the final 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.
12th April, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
12th April, 2022.