

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

Present:

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

INDUSTRIAL DISPUTE CASE NO. 30/2019

Date of Passing Award- 1st May, 2023

Between:

Sh. Vijay Kumar,
S/o Late Shri Roop Ram,
R/o House No. 167-A, Village-
Jhareda, Delhi Canntt., Delhi-110012.

Workman

Versus

Tarus Officer Institute,
Through- Honorary Secretary, The mall,
Delhi Cantonment,
New Delhi 110012.

Management

Appearances:-

Shri Mohan Nair, Ld .A/R for the claimant.

Shri Santosh Kumar Pandey, Ld. A/R for the management.

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Tarus Officer Institute, Through- Honorary Secretary, The mall, Delhi Cantonment, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/09/2018 (IR(DU)) dated 29.01.2019 to this tribunal for adjudication to the following effect.

“ Whether the action of management of Taurus Officers Institute in refusing Sh. Vijay Kumar S/o Sh. Roop Ram who was working on the post of waiter w.e.f. 1989 on ad-hoc basis and made permanent w.e.f. 1990 to resume his duties after being cured from illness w.e.f. 04/03/2011 even though letter of intimation dated 01/10/2010 was given to the management is legal and justified? If yes, what relief is he entitled to and what direction are necessary in this respect?”

As stated in the petition of claim the claimant was appointed as a waiter in the canteen of the management on ad-hoc basis in the year 1989. He was made permanent in the year 1990. When he was performing his duties to the satisfaction of the employer, fell ill on 09.08.2010. being diagnosed with Tuberculosis, he was hospitalized and informed the said fact to the management over phone. Again the fact of his absence from duty on account of illness was duly intimated by him through a written intimation sent through a messenger. Receipt of the same was duly acknowledged by the management. After recovery from illness, the claimant on 05.03 2011 reported for duty with the original medical certificate and fitness certificate issued on 04.03.2011. but he was not taken on duty and advised to come after one week as his service file need to be verified. Thereafter the claimant visited the office of the management on several occasions and received information that his service file is yet to be received. He was not allowed to join duty though he had fully recovered from illness. He was advised to meet the Honorary Secy of the establishment, who was a commanding officer. Having no other source, the claimant met the Honorary Secy, Col Prem Kumar and requested him to join duty. But he was not allowed. On the contrary, he was informed that the management is considering to initiate a court of inquiry against him and he will be intimated about the same. But intimation about inquiry was received. He was visiting the office of the management regularly till the year 2016 and tried to represent the secy about his miserable condition and request to allow him to join duty. But all his efforts went in vain. Hence on 07.01.2017, he made another representation to the management to allow him join his duty. But no reply was received. When the matter stood thus, he came to know about the Award passed by the CGIT Delhi in the ID No 331/2011 in which he was one of the claimants. In the said Award the Tribunal had directed for payment of appropriate wage and

other benefits to the claimants. Thus the claimant made a representation to the management on 19.04.2017 requesting to allow him to join duty and release the benefits as directed by the CGIT. Again the management did not respond and the claimant being wrongly advised, filed a case before the Hon,ble CAT, New Delhi seeking redress. But the Hon'ble CAT by order dt 30th May 2017, passed in OA No 1866/2017, gave liberty to the claimant to withdraw the application for want of jurisdiction and file the same before the appropriate authorities. The claimant thereafter raised the dispute before the Labour Commissioner, New Delhi. The attempts for conciliation failed and the appropriate Govt referred the matter to this Tribunal for adjudication in terms of the reference. In the claim petition filed, the claimant has made a prayer for a direction to the management to reinstate him in service granting continuity and release all other consequential benefits. Along with the claim petition, the claimant has filed copy of the medical certificate, fitness certificate, representations made to the management and the orders passed by the CGIT and CAT, New Delhi.

Being noticed by this Tribunal, the management appeared and filed written statement denying the claim advanced by the claimant. But it has been admitted that the claimant was appointed as a waiter in the canteen of the Management in the year 1989 but he was not made permanent in the year 1990 as claimed by him. The management does not have any official record to justify the claim of the claimant. More over the claim is not maintainable as no demand notice was served on the management before filing the claim. No representation by the claimant was ever received by the management. It has been stated that a person when appointed on contractual basis is at liberty of leaving the employment at his wish. But in the written statement filed, no specific denial to the claim has been stated nor the management has filed any document to establish that the employment of the claimant in the year 1989 was on contractual basis. However the management has denied to have received any representation from the claimant. Besides this the management has challenged the maintainability of the proceeding on the ground of limitation as the claim has been filed after a long delay.

The claimant filed written replication to the written statement of the management stating that the he had sent two written representations dt 07.01.2017 and 19.04.2017, which was

after the award passed by the Hon'ble CGIT. Copies of the representations have been placed on record.

On these rival pleadings the following issues have been framed for adjudication.

ISSUES

- 1-whether the proceeding is maintainable?
- 2-whether the Management had illegally prevented the workman from joining his duty from 01.10,2010.
- 3-what is the effect of that refusal and to what relief the claimant is entitled to.
- 4- whether the claim is not maintainable being barred by limitation.

The claimant examined himself as WW1 and produced the documents like his prescription, medical certificate with the certificate of fitness, copies of the representations dt 01.10.2010, 07.01.2017 and 19.04 2017. He has also filed the copy of the award passed by CGIT Delhi in ID No 331/2011 and the order passed by CAT New Delhi in OA No2954/2003.

Similarly the management examined one of it's officers who is currently working as the Asst Honorary Secy of Taurus Officers Institute. The witness has not produced any document referred to in WS .but a No of warning letters issued to the claimant between Sept 2008 to May 2010 has been filed along with a rough calculation sheet showing the No of working days between January 2009 to Feb 2010, the presence and absence of the workman for duty during that period. The documents have been produced by the witness for the Management as MW 1/1(colly)

At the out set of the argument the learned AR for the Management submitted that the claimant was engaged for work in the canteen of the management on contractual basis in the year 1989. He had worked up to Feb 2010. Being a contractual employee he himself stopped reporting for work and his service was neither terminated nor the management ever refused to take him on duty. More over, during his employment, he was very irregular in reporting for duty and on several occasions he was warned to mend his behavior, which is evident from the document marked as MW1/1 colly. He also argued that the present proceeding , after such a long delay is barred by Limitation.

The counter argument advanced by the claimant is that he was very regular for his duty and it is the first instance when he absented himself from duty for a long period on account of his illness. He also argued that the statute does not prescribe any period of limitation for reference of a dispute to the Tribunal in terms of the provision of sec 10(1) (d) of the ID Act unlike the time frame prescribed u/s 2A of the said Act.

FINDINGS

Issue no1&4

The maintainability of the proceeding has been challenged by the management on the ground of limitation. It has been stated that the alleged termination of service happened in the year 2010 and the dispute was raised by the claimant in the year 2017 and reference by the Govt was made in the year 2019. The learned AR for the management by pointing to the statement of the claimant recorder during cross examination pointed out that the claimant has admitted not to have raised any dispute during the intervening period between 2010 to 2017. Hence the deliberate delay in raising the dispute dis entitles the claimant of the benefits prayed.

But the pleading and evidence of the claimant clearly shows that he, for the refusal of the management to take him for duty made several oral and written representations to the management. He even once met the Honorary Secy of the establishment.

The Claimant has also filed the copies of the representations made by him on 07.01.2017 and 19.04.2017 and the copy of the order passed in OA No 2954/2003, which shows that the claimant, after making representation to the person in authority was waiting for the outcome. Not only that he was also waiting for a favourable outcome in the case of the general demand raised by him and co workmen before the Hon'ble CAT. In his oral statement he has also stated that being wrongly advised he approached the Hon'ble CAT by filing OA 100/1866/2017. The said proceeding was disposed of by order dt30th May 2017 as Annexure E issued to him by the Hon'ble CAT to approach the appropriate forum. This fact has not been disputed by the Management. Thus from the totality of the oral and documentary evidence it is amply clear that

the claimant a person not so educated was waiting for a favorable decision by the management on his representation and later being mis advised filed a case before CAT and having withdrawn the same approached the conciliation officer leading to the present reference. Hence there was no deliberate delay on the part of the workman. More over the statute has not prescribed any time frame for reference u/s 10 of the Act unlike the period prescribed u/s 2A of the Act. Hence it is held that the proceeding is not barred by limitation. These two issues are accordingly answered in favour of the claimant.

Issue No 2&3

Before analyzing the evidence it is necessary to look into the facts admitted by both the parties. It is not disputed that the workman was appointed as a waiter in the canteen of the management in the year 1989 on contractual basis and he continued to work till October 2010. Where as the claimant has stated that his service was made permanent in the year 1990, the management has denied the same in the WS. The claimant has not placed any document to prove that his service was made permanent in the year 1990. It is also admitted by the parties that his last drawn salary was 11,000/- per month. To support the fact the claimant has filed the copy of the Bank pass book.

Now it is to be examined if the action of the management in not allowing the claimant to resume duty is legal and justified.

In his oral statement the claimant has stated that he fell ill on 09.08.2010 and was diagnosed with Tuberculosis and hospitalized. He gave intimation about the same over phone and again by writing sent through his messenger. The written intimation was received by the management. Personal copy of the intimation containing an endorsement of receipt has been filed by the claimant as WW1/1. management has simply denied this endorsement. But no evidence has been adduced to disprove the same. The claimant has filed documents on record to show that he was under treatment for Tuberculosis from 08.09. 2010 to 04.03.2011. and declared fit to resume duty on 04.03.2011. The claimant has stated that he approached the management with the medical certificate requesting to allow him to join. But management made him to run to the office for a long period and ultimately refused his joining .hence he filed a case before the Hon'ble CAT. The management while

examining the witness as MW1 has denied the said stand of the claimant. Very surprisingly, while examining MW1, for the first time the management came up with a stand that the claimant was very irregular in his duty and for the same several warnings were issued to him. The documents supporting the statement were not filed with the WS nor the same was pleaded. Hence the veracity of those self-serving documents can not be accepted to conclude that the claimant was an irregular person and had voluntarily absented himself from duty. This stand of the Management could have been accepted, had there been any document placed on record to show that on any occasion the claimant who was appointed on ad-hoc/contractual basis was called to join duty forth with or any show cause notice was served on him. Merely because the workman during cross examination admitted about receipt of one show cause notice, it can not be accepted to justify the action of the management in not allowing him to join duty. It is worth mentioning that the management has chosen an officer to be the witness, who as per his own statement has joined the establishment in the year 2021, whereas the dispute relates to the year 2010. The witness has admitted that he has no knowledge if the claimant was working continuously from 1989 to 2010. He has admitted that no disciplinary action was taken against the claimant though he has stated that the witness voluntarily stopped reporting for work. The witness has admitted that no notice of termination or notice pay and termination compensation was paid to him. At least the management could have produced documents to show the nature and tenure of the appointment of the claimant. In absence of any documentary evidence, it is held that the claimant was working as a regular employee of the management as waiter and his service was illegally terminated in violation of the provisions of sec 25 F of the ID Act when for a situation beyond his control and on account of illness he remained absent from duty and was not allowed to rejoin duty after recovery amounting to dismissal from service.

The claimant has all along pleaded and stated about his unemployment status. The law is well settled that the workman once discharges his primary burden of proving unemployment, the onus shifts on to the management to prove that the claimant has not been gainfully employed during the intervening period of loss of employment and legal proceedings. In this case the management has remained satisfied by pleading that a young person would not and can not remain unemployed for such a long period.

Thus from the totality of the evidence it is concluded that the service of the claimant was illegally terminated by the management. Now it is to be decided, to what relief the claimant is entitled to. It is not disputed that the claimant had worked for the management for 21 long years, when his service was terminated by the management by not allowing him to join the duty. In the affidavit filed in this proceeding in the year 2019, he has described his age as 50 years and at present he must be 53 years old and has not attained the age of superannuation. The learned AR for the management during course of argument submitted that no identified post of waiter is available to accommodate the claimant if any order of re instatement is passed. On the other hand the learned AR for the claimant argued in favour of re instatement.

In several pronouncements the Hon'ble SC have clearly held that when the termination of service is illegal for non compliance of the provisions of sec 25F of the ID Act, the most appropriate relief would be reinstatement. But the position changes if the said order is passed after a long delay and gap. In such situations the proper recourse is to compensate the workman with the loss suffered.

In this case the termination was effected in the year 2010 and this award is being passed after 13 years and the claimant is now 53 years old. Considering the same it appears proper to allow compensation to the workman in lieu of re instatement. The Hon'ble SC in the case of **Novatris India Ltd vs State of West Bengal and Others (2009) 3 SCC**, have held that merely because the termination is held illegal, it would not justify automatic payment of back wages. For granting the back wages the court has to consider the employment status, length of service of the workman etc. In this case, the workman had worked in the establishment for more than 20 years. No dispute has been raised with regard to his last drawn salary @11000/- per month. There is no evidence on record to believe that the workman has been gainfully employed. Considering all these aspects including the current age of the claimant, it is held proper to grant compensation to the claimant instead of a direction for reinstatement with back wages. The issues are accordingly answered. Hence ordered.

ORDER

The claim be and the same is answered in favour of the workman/claimant. It is held that the service of the workman was illegally terminated by the Management in gross violation of the provisions of sec 25F of the ID Act. The workman since is aged about 53 years and there is a gap of about 11 years between the termination and thi award, the management shall pay him a lumpsum amount of eight lakh in lieu of reinstatement with back wages. This amount shall be paid to the claimant within two months from the date of publication of the award without interest, failing which the amount shall carry interest @ 4% per annum 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.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
1st May, 2023

Presiding Officer.
CGIT-cum-Labour Court.
1st May, 2023