

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. 04/2019**

**Date of Passing Award- 01.09.2022**

Between:

Ms. Radha Devi,  
W/o Shri Ramesh Pal,  
R/o House No. 11, Mandir Marg, Gopinath Bazar,  
Delhi Cantonment, New Delhi.

Workman

Versus

Manager/Principal Officer,  
Army Wives Welfare Association (AWWA Hostel), Vocational Institute,  
Women Hostel, Rao Tula Ram Marg, Opp. Singnals Enclave,  
Cantonment, New Delhi-110010.

Management

Appearances:-

Shri Puneet Singhal  
(A/R)

For the claimant

None for the management  
(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 Army Wives Welfare Association (AWWA Hostel), 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-14012/08/2018 (IR(DU) dated 06/12/2018 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Army Wives Welfare Association (AWWA Hostel) in terminating the services of the workman Ms. Radha Devi W/o Shri Ramesh Pal w.e.f 14.06.2013 who was working on the post of Aaya since last 12(Twelve) years is illegal and/or unjustified and if so to what relief is the workman entitled and what directions are necessary in this respect?”

In the claim statement the claimant has stated that she was working for the management since 12 years preceding to the date of his illegal termination on 14.06.2013 and her last drawn wage was 7254/- per month. She was discharging the duty of Aaya in the Hostel run by AWWA. The management was not maintaining the records of the employee and indulging in different illegal practices to deprive the workers of their lawful rights. Since the management was not paying the minimum wage, not maintaining the wage register, not issuing the wage slip etc the claimant alongwith others

had raised labour dispute before the labour commissioner in the year 2012. Being directed by the Labour Commissioner the management paid the arrear salary to the claimant and others in accordance to the minimum wage in the year 2012 and then cleared the arrears thereof for the period April 2011 to September 2011 and obtained acknowledgement from the claimant and others. On the demand for wage slip they were made to sign on a payment register copy of which was retained by the management. Whenever any employee was raising any kind of complaint the management with a view to suppress their voice was withholding the salary and giving out threatening of termination. During the pendency of the Industrial dispute before the Labour Commissioner the management managed to create some documents to show that the claimant and others are daily wagers although they were getting their remuneration per month. In the month of May 2013 all the employees working for the management had staged a protest against the atrocities and demanded release of their withheld salary. The management offered them to sign the documents relating to full and final settlement as a pre condition for release of withheld salary. Whereas some employees under pressure agreed to sign the papers with regard to full and final settlement, the claimant and few others protested the same. Thus, the management extended the service of the said protesting employees till 14.06.2013 and thereafter suddenly terminated the services of the said workman including the claimant. At the time of termination no domestic inquiry was pending against the claimant. The management while terminating the service of the claimant had not followed the procedure of Id Act as no notice, notice pay or termination compensation were paid to her. The salary for the month of May 2013 and till 14<sup>th</sup> June 2013 were held up but released only on 29.05.2017 as per the direction of the competent labour commissioner. The claimant who doesn't possess any skill has remained unemployed since the date of illegal termination of her service. When all her efforts for reinstatement failed, she again approached the labour commissioner where steps were taken for conciliation. But the efforts for conciliation failed too. The appropriate government referred the matter to this tribunal for adjudication.

The management though was properly served with the notice did not appeared before this tribunal to participate in the present proceeding. Hence, by order dated 25.07.2019 the management was proceeded *ex parte* and the claimant was called upon to adduce evidence.

The claimant testified as WW1 and produced few documents which were marked as WW1/1 to WW1/3. These documents include the photocopy of the Icards issued to the claimant and renewed from time to time upto 2012. The documents also include the copy of the complaint filed before the labour commissioner and the demand notice sent to the management. The cross examination of the witness was marked Nil for the non appearance of the management.

The Ld. A/R for the claimant during course of argument submitted that this is a typical case of unfair labour practice adopted by the

management to deprive the claimant of her lawful right. The oral and documentary evidence adduced by the claimant has not been rebutted by the management. The said unrebutted and unchallenged evidence of the claimant makes out a clear case for her reinstatement into service with full back wages.

The claimant in her sworn testimony has stated that she started working in the Hostel of the management and worked as such till the date of her termination i.e 14.06.2013. Her last drawn wage was Rs. 7254/- per month. The duty discharge by her was that of an Aaya in the hostel managed by the respondent. The management was not very happy on the claimant as she alongwith others was often raising complaints for the unfair practice adopted by the management. On their demand the management was compelled to pay them minimum wage. Being aggrieved by the proactiveness of the claimant and others the management in May 2013 asked all the employees to leave their job on receipt of full and final settlement. Though, few employees accepted the offer the claimant did not agree. The management allowed her to work till 14.06.2013 and without giving her notice illegally terminated her service on that day. Another complaint being raised before the labour commissioner the management released her arrear salaries in the year 2017 only. But the claimant in this petition has claimed for reinstatement with back wages for the unfair labour practice meted to her. To support her stand the only document filed are the photocopies of the I cards issued by the management to her. These documents have been marked as exhibit WW1/1 (Colly). These documents describe the claimant as the employee of AWWA i.e the respondent from 30.03.2007 to 31.03.2012. This I card was issued under the seal and signature of the manager of AWWA Vocational Institute. The claimant during course of argument submitted that she is an illiterate workmen and the management was not issuing any other document to her in proof of her employment. Even the salary slips signed by the claimant were being retained by the management. Thus, the claimant has pleaded that the illegal termination of service should be remediated by a direction to the management for her reinstatement with all back wages.

It is a decided Principle of law that for issue of a direction for reinstatement, the tribunal has to examine if there existed any employer and employee relationship between the claimant and the management on the alleged date of termination. For this the burden lies on the party who asserts such relationship. It is very often seem that the claim is advanced by the illiterate and ignorant workman against the mighty employer. In such a situation it is very difficult to render documentary evidence in support of the oral documents of employment. In this case the claimant in her oral testimony has stated that she was working continuously for 12 years for the management preceding to the date of termination. Photocopies of the I cards are the only documents filed by her to support the oral statement. As stated in the preceding paragraph the evidence adduced by the claimant stood

unrebutted for the absence of the management. Hence, this tribunal has no hesitation for accepting the same, however slender it may be to hold that the claimant was the employee of the management and had worked for 12 years continuously preceding to the alleged termination.

The other grievance of the claimant is that during the course of employment the minimum wage was not paid for which she had raised a dispute before the labour commissioner and for the direction given by the commissioner, minimum wage was paid belatedly. At the time of alleged termination no inquiry was pending nor any notice of termination was issued to her. In the case of Maharashtra State Road transport corporation and another vs. **Casteribe Rajya Parivan Karmachari Sangathan 2009 Supreme(SC) 1504** the Hon'ble Supreme Court have clearly held that engaging employees as Badlis, casuals or temporaries and to continue therein as such for years with the object of depriving them of their status amounts to unfair labour practice. Now it is to be examined if the action of the management in terminating the service of the claimant was illegal and to what relief she is entitled to. It has already been held that the claimant has successfully established her relationship as the employee of the management and that she was working continuously for the management before the termination. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the claimant has prayed for relief of reinstatement simplicitor. But absolutely no evidence has been laid by the claimant from which it can be presume that the work discharged by the claimant was perennial in nature and there still exist vacancy in the management. In such a situation it is not felt proper to direct that the claimant should be reinstated automatically. However, keeping the circumstances in view and for the foregoing reasons it is concluded that the claimant was subjected to unfair labour practice by the management. There was a gross violation of the provisions of section 25F of the ID Act. Hence, ordered.

#### **ORDER**

The reference be and the same is accordingly answered against the management and in favour of the claimant. The management is directed to pay a lumpsum amount of Rs. 150,000/- to the claimant for the illegal termination of service meted to her within 45 days from the date of publication of this award without interest failing which the amount shall carry interest @ 9% per annum from the date of 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.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
1<sup>st</sup> September, 2022.

Presiding Officer.  
CGIT-cum-Labour Court.  
1<sup>st</sup> September, 2022.