

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-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 78/2015

Date of Passing Award- 11th May,2023

Between:

Shri Raj Singh
S/o SHri Sunehra Singh,
R/o V.&P.O Bambewa,
Tehsil Beri, Distt. Jhajjar,
Haryana,

Workman

Versus

Management of BWFS (Bird Worldwide Flights)
Services (India) Pvt. Ltd.
Room No., 406, 4th Floor,
G+5 Building Terminal III,
IGI Airport, New Delhi

Also at: E-9, Cannaught House,
Cannaught Place, New Delhi.

Managements.

Appearances:-

Shri Vijay Pal, Ld. A/R for the Claimant.

Shri Kunal Mehta, Ld. A/R for the management

A W A R D

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As per the claim statement the claimant Raj Singh was appointed with the mgt in July 2009 as Operator II. In due course, he was promoted to the cadre of operator-III with effect from April 2014. Though promoted he was not imparted any training as operator III by the mgt. But juniors to him who too were promoted to the cadre of operator III were given training and asked to work in the post of Operator III. But the claimant for want of training, was asked to work as operator II despite his promotion. When the workman was rendering his service with utmost sincerity and dedication till 16.12.2014, surprisingly on 17.10.2014 when he reported for duty at the IGI Air Port as per his duty schedule, the mgt without assigning any reason refused to take him on duty. The workman requested time and again to allow him for performing duty. Though a pass for duty issued by the mgt was received by him on 19.01.2015, he was not allowed to perform duty. On 2/3 occasions when workman went to the office of the mgt with a request to allow him for performing duty, he was treated with the rude behavior of the mgt. On 2/3.01.2015, he received a registered letter from the mgt and on opening the same found the letter dated 29.11.2014 which was in the nature of a notice calling an explanation for his unauthorized absence, failing which necessary disciplinary action shall be taken against him. Though the date of the notice was 29.11.2014, in the content of the notice it was mentioned that he has absconded from duty with effect from 17.12.2014. The claimant gave reply to the said notice. Again on 10/11.01.2015 another notice was sent by registered post was received by the claimant wherein it was mentioned that it is with reference to the letter dated 29.11.2014. In the said notice he was directed again to

report in HR office immediately failing which necessary disciplinary action shall be taken. This notice issued on 06.01.2015 was received by claimant on 10.01.2015. No disciplinary action has been initiated till date against the claimant but all his request to take him back to duty was turned down. His last drawn salary was Rs.19,276/- per month which was last paid up to 16.12.2014. After serving a long period with the mgt the claimant could not find any other employment and made repeated request for reinstatement into service. Finding no other efficacious remedy, he raised a dispute before the conciliation officer. For the non cooperation of the mgt conciliation failed and he was advised to approach this Tribunal directly by invoking the provision of section 2A of the ID Act. Hence, he has filed the present claim petition. IN the claim petition the clamant had prayed for a direction to the mgt to reinstate him into service with back wages for the period 21.12.2014 to 20.01.2015 and till the reinstatement is made with all to other consequential benefits. Along with the claim petition the claimant filed the photo copy of the conciliation failure report, his appointment letter the show cause notice number 1 and 2 received from the mgt the it ID cards issued by the mgt of this proceeding as well as DIAL, the Airport entry pass issued by the Bureau of Civil Aviation Security, the representation sent by the claimant to the HR head of the mgt etc.

Being noticed the mgt BWFS field written statement stating that the claimant Raj Singh was never terminated or dismissed from service by the mgt. Alledging that the claim is not an industrial dispute, the mgt has stated that the claimant was admittedly appointed as operator II in the year 2009. In April 2014 he was promoted to the post of Operator III and the agreed salary per annum was 1,35.,528/-. As per the contract of employment, the employee, if would remain absent from duty unauthorizely or without reasonable explanation for more than 7 consecutive days, it will be presumed that he is no longer interested for working in the company . This claimant was on duty on 17.12.2014 at IGI Airport New Delhi. The job assigned to him by his immediate superior was not carried out as the workman refused to

carry out the same. On that day that is 17.12.2014 he left his duty after refusing to carry out the order. From that day, that is 17.12.2014 he remained absent and on 29.12.2014 a notice was sent to him by registered post vide postal receipt dated 30.12.2014 in his permanent address available with the mgt. In the said notice he was directed to report duty immediately failing which suitable disciplinary action shall taken against him. But the claimant failed to report for duty and as such another notice dated 06.01.2015 was sent to his permanent address and both the notices were duly served on the claimant. But the claimant did not obey the direction given in the notice. The mgt finding no other way sent a final notice dated 09.01.2015, in his permanent address and in the said notice the workman was clearly told that for his absconding from duty since 17.12.2014, it is believed that he has abandoned the service of the company. However, in the said notice he was again advised that in case he would fail to resume duty, he should return the property of the mgt including the Airport entry pass etc. and come forward to settle his accounts with the company. The notice dated 09.01.2015 was also delivered to the claimant. After receipt of the third notice dated 09.01.2015 the claimant came up with a false plea that the contents of the notice are incorrect and the notice dated 29.12.2014 is the only notice received by him. The workman since failed to resume duty after service of all the three notices the mgt found him guilty of committing the breach of clause 9.2 (d) of the contract of employment and he was treated to have abandoned the service of the mgt. However, at a good gesture, the mgt as another opportunity sent a letter dated 20.01.2015 by registered post asking the claimant to explain within 48 hours of the receipt of the letter as to why he absconded from duty with effect from 17.12.2014. But the workman failed to reply and continued to absent himself from duty. Thus the mgt has pleaded that the service of the claimant was never terminated nor he was dismissed, but it is a case of voluntary abandonment and the claimant is not entitled to the relief prayed for.

The claimant filed rejoinder to the W.S stating that he was always interested to work with the mgt but the mgt never treated him cordially and the allegation that he abandoned the service is al false. For reasons known to the mgt he was not allowed to perform duty from 17.12.2014. The mgt illegally terminated his service in gross violation of the provisions of ID Act and before such termination no domestic enquiry was conducted against him.

On these rival pleadings the following issues were framed.

Issues

1. Whether there exists employer and employee relationship between mgt and workman? If so its effect?
2. Whether this Industrial Dispute is maintainable or not? If so its effect?
3. To what relief the workman is entitled to and from which date?

The claimant examined himself as ww1 and proved the documents which were marked in a series ww1/1 to ww1/11. These documents include the conciliation failure report claimant's appointment letter containing the terms of employment contract a letter written by the mgt to the claimant appreciating his effort to subside the strike of the employees on 7th & 8th Feb 2013 the letter of promotion the notice number 1 and 2 the photo copies of the I Card and air port entry pass and the representation of the claimant requesting the mgt to take him on duty. Similarly, the mgt examined its DGM as MW1 who produced a number of documents. The documents include the four notices sent to the claimant, the internal e-mail received from the HR Department intimating about the absconding of the workman the letter of the claimant received by the mgt the postal receipt etc. Both the witnesses were cross examined at length by the adversaries.

At the outset of the argument the Ld. A/R for the mgt submitted that this is not an Industrial Dispute in terms of Section 2(k) of the ID

Act, since no demand notice was served before raising the dispute. He also submitted that this is not a case of termination or dismissal from service as alleged by the claimant. The claimant had voluntarily abandoned the service of the mgt by remaining absent for a continuous period of 7 days or more which was a clause in the contract of employment. In that view of the matter it cannot be said that the provision of section 25-F was required to be complied, but not complied, making the termination of service illegal. The Ld. A/R for the workman while pointing out to the notices issued to the claimant by the mgt and the photo copies of the log book filed by him, submitted that the mgt had illegally refused to take him into service despite repeated request made by the claimant. The action of the mgt amounts to termination of service. He also pointed out that in this case the mgt has admitted about non compliance of the provisions of section 25-F of the ID Act and for the unfair labour practice meted to the claimant he is entitled to reinstatement into service with full back wages. He also pointed out that the claimant is unemployed since Dec 2014 and struggling with the litigation. Hence, a amount of litigation expenses be paid to him by the mgt.

Findings

All the issues

The mgt had challenged the maintainability of the proceeding on the ground that no demand notice was served by the claimant on the mgt. The amended claim petition was filed by the claimant of 06.09.2016. In this claim petition there is no mention about service of any demand notice on the mgt. But the facts pleaded by the parties shows that before approaching this Tribunal by invoking the provisions of Section 2A of the ID Act, he claimant had raised a dispute before the conciliation officer and during that conciliation proceeding ,the mgt had appeared and participated. The failure report of the conciliation proceeding has been placed on record by the claimant. As per this report the mgt had participated in the conciliation proceeding. Hence, it cannot be said that the mgt had no

notice with regard to the claim of the claimant. Accordingly, it is held that the maintainability of the claim cannot be challenged on the ground that demand notice was not served on the mgt.

It is the specific stand taken by the claimant that he started working for the mgt in July 2009. He was promoted to the cadre Operator III in the month of April 2014. He had performed the duty as such till 16.12.2014. But suddenly on 17.12.2014 mgt refused to take him for work. For few days he ran to the office with a request to take him on duty. But his request was not acceded to. On the contrary, on 02/03.01.2015 he received a registered letter having caption notice (1) wherein it was alleged that he absconded from duty with effect from 17.12.2014. On 10/11.01.2015 another notice dated 06.01.2015 was received by him with caption notice (2) wherein it was again alleged that he has absconded from duty without prior approval and advised to report in the HR Office. After receipt of both the notices, the claimant gave reply stating that he has not absconded but the mgt refused to take him for duty. But surprisingly the mgt did not consider the reply and on 28.01.2015 by issuing a final notice terminated his service without complying the provisions of 25-F of ID Act. The claimant during his examination has proved the notice dated 29.11.2014 with caption notice (1) and the noticed dated 06.01.2015 notice (2) his reply to the mgt as WW1/11. In the oral statement the claimant clearly stated that the notices were concocted to put some blame on him and he had never absconded from duty. Rather the mgt refused to take him on duty.

The witness examined by the mgt is the DGM of the Company he proved many documents in support of the stand of the mgt that the claimant had abandoned his duty for a continuous period of 7 days or more and the mgt had never terminated his service. The claimant during cross examination was confronted with the notice number dated 29.11.2014 the notice number 2 dated 06.01.2015, and notice number 3 dated 09.01.2015 and the final notice dated 28.01.2015 marked as ww1/m1, ww1/m3, ww1/m5 and ww1/m7 respectively and

asked, if he had received all these notices in his home address. To the said question the claimant answered affirmatively. On the basis of this oral and documentary evidence mgt took a stand that the claimant himself has filed the contract of his employment as ww1/2. In this document at clause 9.2(d), it has been clearly mentioned that if the employee without any authorization or reasonable explanation remains absent for more than 7 days consecutively, it will be presumed that he is no longer interested in working for the company and have abandoned his service. The company will have the right to terminate the contract of service. The mgt thereby argued that the notices placed on record clearly shows that the claimant has absented from service for consequential 7 days and more and despite receipt of notice did not report in the HR Department, which by necessary implication amount to abandonment of service. But in this case the mgt as a good gesture, called the claimant by issuing notices to report to the HR but he did not comply. Furthermore the claimant, as per his own admission had worked till 16.12.2014. On 17.12.2014 he did not accept the duty assigned to him and left the office unauthroziely and did not return despite service of the notices. The mgt witness during his examination stated that documents have been filed relating to absence and absconding of the workman from duty with effect from 17.12.2014. The notices sent to him have been acknowledged during cross examination. He did not report to the HR as directed and voluntarily left the job. Hence his demand for reinstatement cannot be entertained.

On behalf of the workman a photo copy of the log book was filed at a belated stage. The said document could not be exhibited for the objection of the mgt and kept on record being marked as X. The Ld. A/R for the workman pointed out to this log book and stated that as per the entry in the log book bearing serial no 428 dated 09.01.2015, the service of the claimant and two other operators were terminated at 6 PM, which is illegal.

From the admitted state of evidence it is evidently clear that the claimant was appointed in the mgt in July 2009 and he was granted promotion in April 2014. His last drawn salary which has not been disputed by the mgt was Rs. 19276. It is also admitted by both the parties that the claimant had last worked on 16.12.2014. Whereas the claimant states that his service was terminated with effect from 17.12.2014, the mgt has taken a stand that he himself abandoned the service by remaining absent for more than 7 days and as such his contract of employment stood automatically terminated.

It is an admitted state of fact that no termination letter, termination notice was issued or termination compensation was paid to the claimant. Hence, it is necessary to examine if the cessation of work of the claimant amounts to termination of service or abandonment of service. Clause 9.2 (b) of the employment contract exhibited by the claimant as ww1/2 clearly envisages that an employee remains absent unauthorizely for 7 days or more, the same would amount to abandonment of service leading to termination of the contract of employment. The claimant argued that he reported for duty on 17.12.2014 and thereafter. But the mgt refused to take him for work. Except the oral evidence, no document has been filed by the claimant to prove this aspect of his claim. The evidence reveals that there is a biometric system of attendance. The claimant has not stated that he marked his attendance using the same or by producing any paper in the dak to mark his attendance. On the other hand the mgt issued three notices that is ww1/m1 ww1/m3 and ww1/m5 between 29.12.2014 to 09.01.2015. Claimant has admitted receipt of these notices. In these notices the claimant was called to report before the HR and it was also mentioned that his conduct leads to an assumption that he is not interested to continue in service. Surprisingly, the claimant though admits receipts of these notices has not stated as to why he did not go to meet the HR as directed. On the contrary, he remained silent by giving written reply to the notice which has been marked as ww1/11 by the claimant. This reply was sent by the claimant on 31.01.2015 to the HR Department of the mgt. The mgt

thereafter, on 20.01.2015 issues the forth and final notice to the claimant, giving him the last opportunity of furnishing proper explanation and justification for the continuous absence from duty. It is noticed from the evidence that the claimant though received the notice, did not respond to the same. Thus the circumstances clearly lead to a conclusion that the claimant on 17.12.2014 stopped reporting for duty and despite receipts of four notices from the mgt directing to report before the HR and furnish explanation for his absence, did not meet the HR and remained satisfied by giving one written reply to the notices on 31.01.2015 which is marked as ww1/11.

The Ld. A/R for the mgt argued that this is a typical case of abandonment of service by the claimant and no liability can be shaddled on the mgt. It is a fact noticeable from the evidence that the claimant, despite receipt of four notices did not appear before the HR and remained silent by submitting only one written reply marked as ww1/11. At the same time, it is also noticed that the mgt showed lack of diligence by not issuing any show cause notice to the claimant calling him to show cause as to why disciplinary action shall not be taken against him for the said unauthorized absence. It is also noticed that the last and final notice was sent to the claimant on 28.01.2015, but prior to that in the entry dated 19.01.2015 made in the log book the termination of service of the claimant along with two others was endorsed. This action of the mgt amounts to unfair labour practice leading to illegal termination as it is not disputed by the parties that the provisions of section 25F were not complied. Be it stated here that it is not disputed here by any party that the claimant had worked for continuously for 240 days or more in the establishment of the mgt preceding the date of his termination.

Now it is to be examined to what relief the claimant is entitled to. IT is not disputed that the mgt is a company engaged in ground handing at the AIR port. It has a good number of employees to execute the contracted work. But there is absolutely no evidence adduced by the parties to make the Tribunal believe that there is still a

vacancy in the Cadre of operator III in which the claimant was working before termination. His work was discontinued in the month of Dec 2014 and more than 8 years passed in the meantime. Considering the situation it is not felt proper to direct the mgt to reinstate the claimant in service. It is felt proper to direct the mgt to compensate the claimant for the illegal termination. Hence Ordered.

Order

The claim petition be and the same is answered in favor of the claimant. The termination of service of the claimant is held to be illegal as the mandatory of provisions section 25-F were not complied by the employer before such termination. The evidence is clear to the extent that the claimant had worked for the mgt for four years and four months commencing from July 2009 to Dec 2014. In view of the same the claimant is held entitled to retrenchment compensation equivalent to 15 days average pay for each completed years of continuous service and part thereof in excess of six month. Hence, the claimant is held entitled to 60 days average pay in addition to one month pay in lieu of notice and an amount towards litigation expenses. Accordingly the mgt is directed to pay Rs. 1 Lakh 50 thousand to the claimant within 1 month from the date of publication of the award without interest failing which the amount shall carry interest at the rate of 6% 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.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
11th May, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
11th May, 2023.