

**BEFORE CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM-
LABOUR COURT NO-II, NEW DELHI**

I.D. No. 03/2019

Sh. Amar Kumar, S/o Sh. Khubari Das,
R/o B- 177, Gotampuri, Phase-II,
New Delhi- 110076,

...Claimant/Workman

Versus

- 1. M/s Sudharshan Facility Pvt. Ltd.,**
18, Local Shopping Centre, 2nd Floor,
Mandangir, Delhi-110062

- 2. The Director, All India Institute of Medical Science (AIIMS),**
Ansari Nagar, New Delhi- 110023 Managements/Respondents

AWARD

The appropriate government through **Rajendra Joshi, Deputy Director** has sent the reference refer dated 17.12.2018 to this tribunal for adjudication with the following words.

“Whether the termination of Sh. Amar Kumar Insa working as Safai Karamchari by the management of M/s Sudershan Facilities Pvt. Ltd. (Contractor) who is providing the sanitation/ housekeeping services to AIIMS (Principal Employer) w.e.f 27.07.2017 is just, fair and legal? If not, what relief the workman concerned is entitled to?”

Claimant claimed to have working as Sanitation Assistant in A.I.I.M.S for the last more than 04 years and attached to **M/s Sudershan Facilities Pvt. Ltd.** The company rendered/provides services of housekeeping and sanitation etc. to the principle employer **All India Institute of Medical Sciences, a government of India hospital at New Delhi.** It is his case that since May, 2017 he was being harassed by the management of this company and it was not allowing him to work regularly without any reasons. He was mentally tortured by the then manager of the company on 05.08.2017 and refused to give the duty to him. No termination letter or dismissal letter was ever issued by the company. Vide letter dated 12.08.2017 a legal notice was served to the company through his counsel, asking the reason for his removal from the employment. Reply was received to the applicant stating that there was complaint against the claimant. He has raised the industrial dispute and filed the complaint before the Labour Commissioner, Govt. of NCTD. However, it has referred the dispute to the **Deputy Labour Commissioner (Central) Jeevan Deep Building, Parliament Street.** Conciliation failed. Hence, the present dispute.

Respondent-1 M/s Sudershan Facilities Pvt. Ltd. has filed the reply. It has taken several preliminary objections, he had denied the averment made by the claimant. However it is admitted by the respondent that the claimant has been working in some other organization. He submits that applicant always insisted to join duty at AIIMS that too night shift, while he was offered duty at other place. He submits, claim be dismissed. Rejoinder has been filed by workman. Management-2 has not contested the case, however counsel of the management-1 i.e. AIIMS has appeared at the time of final argument.

From the pleading of the parties following issues have been framed vide order dated 09.07.2019.

1. Whether the proceeding is maintainable.
2. Whether the service of the workman was terminated illegally, if so by whom.
3. Whether the workman is entitled to the relief of reinstatement with back wages, and other consequential benefits.
4. To what relief the parties are entitled to.\

In support of his claim, workman has tendered the affidavit in evidence. He had reiterated the facts mentioned in his claim regarding the fact that he was in the employment of the principle employer AIIMS for the last four years from the date of his illegal termination i.e. 05.08.2017. He was on the post of Sanitation Assistant looking housekeeping reporting to the manager of the respondent company. He finally was refused duty by the management company. AIIMS New Delhi is equally responsible for his illegal termination. He had relied upon two documents i.e. Annexure-1 i.e. legal notice dated 12.06.2017 addressed to Vasundhra Ji, **Director M/s Sudharshan Facilities Pvt. Ltd. New Delhi**. The second document which the workman has relied is the reply filed by the **Sudharshan Facilities Pvt. Ltd.**

Section 2 (s) of the Industrial Disputes Act define the workman, it reads as under:

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or

implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties, attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

Section 2 (j, k& oo) of the I.D Act define the industry and industrial disputes respectively. It reads as under:

- [j] “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;
- (k) “industrial dispute” means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;
- (oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- [(bb)] termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such

- contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

Workman/claimant is required to bring its case within the four corners of the above said definition of workmen industry and industrial dispute.

Now come to the case in hand. Claimant has claimed to have been working in AIIMS through respondent-1, the contractor **M/s Sudharshan Facility Pvt. Ltd.** as Sanitation Assistant. He had led the evidence also to the effect that he has been working with respondent-1 as Sanitation Assistant. In the evidence he did not seek any relief against the respondent-2. His case is that his services have been terminated by the respondent-1 from 05.08.2017 as he was not given any duty. The above testimony of the workman remains unchallenged, unrebutted and uncontroverted.

He had proved from the above said testimony that he is a workman and he worked with **M/s Sudharshan Facility Pvt. Ltd.** who used to offer services to the government institution, therefore, the respondent-2 is an industry. His further contention is that his services have been terminated without any rhyme and reason, therefore, industrial disputes have arisen.

Facts culled from the evidence, which the workman has led is that his services have been terminated. He has relied upon the document Ex. WW1/2 that is a reply filed by **M/s Sudharshan Facility Pvt. Ltd.** in respect of his notice whereby he has admitted that the workman was his employee. Respondent-2 has not led any evidence contrary to the fact deposed by the workman nor he had cross-examined the workman contradicting him or impeach his credibility.

From the above discussion, workman has proved that he had worked as workman with respondent-2 and his services have been terminated illegally as no notice pay for retrenchment compensation as either been offered or given. Not only he had proved that his petition is maintainable but also he had proved that his services have been terminated illegally, therefore, issued no.-1&2 has been answered accordingly.

ISSUE No. 3 & 4: What relief, the workman is entitled and be given.

Workman claims that he be given reinstatement of service with full back wages with respondent-2 since the date of his termination, he is jobless. He has two kids depending upon him and he has been undergoing with financial crisis. The testimony of this witness is unchallenged as the management-1 had not cross-examined him that he has been doing job, therefore, there is no doubt left in the mind of the court/tribunal that the workman has got any job.

Admittedly the workman had worked for four year with respondent-1. Normally when the workman services were terminated, naturally reinstatement with full back wages would follow. However, in recent past there has been a shift in the legal position and long line of cases decided by the constitutional court that relief of reinstatement with full back wages is not automatic and may be fully inappropriate where the workman worked only for a year or two. However, herein present case respondent-1 the employer has not contested the case with strength. He had only made lip services by filing the written statement.

In these circumstances, when the workman age is only 26 year and he had served four year with the respondent-1 having two kids for look after, relief of reinstatement with full back wages is appropriately relief. Hence, the workman is entitled for reinstatement with full back wages from the respondent-1. As no relief has been sought from the respondent-2 therefore, award cannot be passed against the respondent-2. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room

Date 14th, June, 2024

ATUL KUMAR GARG
Presiding Officer.
CGIT-cum- Labour Court-II