

**SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL
GOV. INDUSTRIAL TRIBUNAL CUM – LABOUR COURT
NO II, NEW DELHI**

ID No. 200/2019

Sh. Vinay Kumar Rai Vs. Shinhan Bank & Ors.

Counsels:

For Applicant/ Claimant:

Sh. S.P. Dubey, Ld. AR For claimant.

For Management/ Respondent:

None for Shinhan Bank.

None for Cops Security & Allied Services.

Award

1. This is the claim petition filed by the claimant U/s 2 (A) of the industrial dispute act, 1947 after the failure report issued by the appropriate government to that effect. Claimant in his statement stated that he had been performing his duty for the last several years in the premises of management-1 through management-2 with the last drawn wages of Rs. 21,700 per month. He did his duty with diligence and honesty. Management had not got his ESI card while he was in service, when he demanded the same, his service had been terminated without giving any cause in writing on 16.11.2016. He had given the written complaint through union to the **labour office, Pushpa Bhawan, Pushp bihar, New Delhi**. Both the managements appeared therein, however, conciliation could not take place there, hence he filed the present claim with the

prayer that he be reinstated with full back wages. Notice of this petition had been issued to both the managements. Both the managements had appeared herein. Management-1 had filed the short reply denying employer-employee relationship between him and the claimant. It is the stand of management-1 that he had given contract to **M/s Cops Security and allied services** for security of bank branches at Delhi. Management-1 does not appoint any security guards nor it has any control over security guards/gunmen employed by M/s Cops Security and Allied Services. Wages of security guards are paid by the security agency because management gives an annual tender contract wherein the amount is negotiated and fixed on certain terms of management codified as per contract of management of security. He submits that claim qua him be dismissed.

2. Management-2 had also filed the reply/written statement. He had taken various preliminary objections inter-alia the claim is not maintainable and is liable to be dismissed as statement of claim had not been filed within the time prescribed; as there is no employer-employee relationship between above named claimant and management-1; claim against respondent is misconceived and has been filed upon instigation of some vested interest where only intention is to harass the respondent and blackmail in order to extort money; claim is liable to be dismissed as the workman is guilty of suppression of material particular. On merit, respondent-2 had stated that there was a contract between management-1 and management-2 for providing security services at the bank premises as per address mentioned in the work order and as per the said contract; claimant was employed by

management-2 at the place of management-1. Services of the workman had never been terminated, it was workman himself who had left his services from management-2 after taking his full and final amount. He had admitted the date of appointment. He denied that he had continuously taken the service of overtime from workman and did not provide the payment and benefit of overtime services. Management-2 submits that he is still ready to take the workman on duty. He denied that performance of workman was satisfactory. He submits that workman was engaged at the post of security guard with management-2 and he was posted at Shinhan Bank as security guard with a gun to do the duty. However, he had not met the requirement of the duty and various allegations were labeled by management-1. A letter was issued by management-1 to management-2 for his replacement. On the demand of management-1, management-2 requested the workman for his replacement, but he had left the service. He submits that claim of claimant be dismissed.

3. Rejoinder had also been filed by the claimant where he denied the averment made by both the managements and affirmed the averment made in his claim statement.

4. After completion of the proceedings, following issues had been framed vide order dated 16.11.2021:

1. Whether the proceeding is maintainable.

2. Whether there exists employer and employee relationship between the claimant and management-1.
3. Whether the service of the claimant was illegally terminated by the management-2.
4. Whether the claimant is entitled to reinstatement into service with back wages and other benefits as claimed.

5. In order to prove his contention, workman himself had come to the witness box and filed his affidavit of evidence. He had reiterated the facts mentioned in his claim statement. He had relied upon eight documents i.e. Copy of demand letter, copy of postal receipts, complaint given to labour department, failure report, letter given by Cops Security and Allied Services. Both the managements who had been appearing, stopped coming after framing of issues. Workman evidence remained unchallenged because management had not cross-examined the workman witness, even both the managements had been given opportunity to lead its evidence, however, they had chosen not to lead evidence.

6. In order to prove his case, the claimant firstly had to prove that he is a workman, he worked in an industry, an industrial dispute arises and he was terminated for this reason. For this, section 2(S), 2 (J & K) and section 2 (OO) are required to be reproduced.

Section 2 (s) of the Industrial Disputes Act defines 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 by reason of the powers vested in him, functions mainly of a managerial nature.]*

Section 2 (j, k & oo) of the ID 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 employers 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;

7. From the facts and evidence produced herein, there is no doubt that the claimant is a workman because his job is of manual nature and he stood posted as a security guard in the branch. As respondent-2 was the service provider so it has come within the definition of industry. Now the workman was required to prove that his services were terminated and industrial dispute had been apprehended. He was given the failure report by the conciliation officer, both the managements appeared therein.

8. Now come to the question whether services of the workman had been terminated illegally or unjustifiably and in violation of provision of section 25 (F) of Industrial Dispute Act. Here the workman though had sought the relief against both the managements, however, he had not come with any evidence that he was ever appointed by respondent-1. His claim is only that he had worked in the premises of respondent-1 through respondent-2 who was the service provider. His

contribution had been deducted for PF and ESI by respondent-2. Therefore, no relief can be given against the respondent-1 who is the principal employer. Respondent-2 has taken the stand only that the workman had left the services of his own because he had been asked for replacement due to various complaint received in writing from respondent-1. However, in this respect, workman had not been cross-examined by any of the managements nor the managements had led any evidence buttressing to the fact, therefore naturally, no question arises for compliance of section 25 (F) for retrenching the services of the workman. Hence, workman has proved the case that his services were illegally terminated by management-2. He has not been given any compensation or one month notice, therefore, **issue-1 and 2** in regard to the maintainability and termination of the workman are concerned, the same are held in favor of workman and against management-2.

9. In regard to **Issue-3 & 4**, Workman claims that he be given reinstatement of services with full back wages since his date of termination by management-2 as he is jobless since then and has been facing financial hardship in keeping his family.

10. Further workman had examined himself, WW1 remains unchallenged, unrebutted and uncontroverted, therefore, there is no doubt left in the mind of this court/tribunal that the workman had got any job after his termination.

11. Admittedly, workman had worked for more than six years with management-2. Normally, when services of the workman 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 maybe fully inappropriate where the workman worked only for a year or two. However, it depends upon case to case where the relief of reinstatement has to be given.

12. Here in the present case, workman at the time of filing the evidence was almost 50 years old, he had not given the list of any family member dependent upon him. So, this tribunal is not inclined to give the relief of reinstatement. It would be better if the lump sum amount is given to the workman in lieu of reinstatement. In these circumstances, amount of Rs. 5,00,000/- (Rupees Five Lakhs only) is an appropriate relief in lieu of his illegal termination. Hence, this award is passed against the respondent-2 for paying the amount of Rs. 5,00,000/- (Rupees Five Lakhs only) in lieu of his illegal termination. Award is accordingly passed. Copy of this award is sent to the appropriate government for notification as required U/s 17 of the I.D. Act. This file is consigned to record room.

Dated 14.06.2024.

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II

