

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. 36/2018

Date of Passing Award- 15th May,2023

Between:

Shri Ranjeet Kumar Sharma,
S/o Rama Shankar Sharma,
R/o H. No. 35 Sainik Enclave, Sector-5,
Mohan Garden, Uttam Nagar,
New Delhi-110059

Workman.

Versus

New Delhi Municipal Council
Through Depty Director(CGIT)
Palika Kendra,
New Delhi-110001

Management.

Appearances:-

Shri A. Dingra, Ld. A/R for the Claimant.

Shri Raghvendra Upadhaya, 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 stated in the claim petition, the claimant workman was engaged in the management in Feb 2010 as a temporary mustor roll employee (TMR). On 14 .08.2014 he was posted as a Regular Mustor Roll Employee (RMR) and posted and joined at the Connaught Place Division under EE(CP). He is a native of the state of Bihar and from 27. 06.2017 to 08.07.2017 , he was on leave and had proceeded to his home state in the evening of 24.06.2017 as 25th and 26th were holidays. On 09.07.2017,

which was a Sunday, he returned to Delhi, and on the following Monday i.e on 10.07.2017, joined his duty as usual. In the evening of 12.07.2017, he was called by police to P.S Sagarpur New Delhi. On his arrival there, he was suddenly arrested by police on the allegation that one Bacchi Kumari has lodged one FIR against him and on the basis of the same a case has been registered. Without giving him opportunity of informing his relatives, police produced him in the Patiala House Court and the Magistrate remanded him to jail custody. His relatives having come to know about the same arranged the assistance of an advocate and on 29.07.2017, he was released on bail. After release from custody, on 01.08.2017, he reported joining to the Junior Engineer of the Division he was working describing in detail the cause of his absence from duty. But he was not allowed to join. On the same day a show cause notice was issued to him calling him to explain within three days as to why he failed to intimate about his detention in police custody and as to why a police case has been registered against him, and why his service shall not be terminated. The claimant received the notice on 03.08.2017 and on the next day i.e on 04.08.2017, submitted his reply explaining that he has been falsely implicated in the police case and the complainant has not explained as to why she had not alleged this earlier. It was also explained that he was on leave from 26.07.2017 to 09.07.2017 and reported for duty on 10.07.2017. suddenly he was arrested on 12.07.2017 and remanded to judicial custody. Hence he had no scope of informing this fact to the management. Soon after his release from jail, on 01.08.2017 though he reported to the Junior Engineer, his joining was not accepted. On the contrary the show cause notice was served. Despite submitting proper explanation, the management in a hasty manner terminated his service. Finding no other way, he raised a dispute before the labour commissioner and on issue of a failure Report filed the application u/s 2A of the ID Act. In this claim petition the claimant has prayed for a direction to the management to reinstate him in service holding his termination illegal and the period of his absence be treated as leave.

The management filed written statement admitting that the claimant was working as a RMR since 14.08.2014 and his

service was terminated on 18.08.2017 entirely on the basis of gross indiscipline and unauthorized absence from duty. The claimant had never informed the employer about his arrest and detention in judicial custody on the allegation of another female employee for causing sexual harassment to her and giving out threatenings. He had also suppressed that a criminal case on the charges u/s 354, 354B , 506 and 509 IPC was registered against him. It is further pleaded by the management that the claimant was working as a RMR which is a status of casual employee and the CCS Rule as applicable to permanent employees of central Govt. is not applicable to him. Hence there was no necessity of framing a charge or conducting a domestic inquiry against him. Hence the management after due consideration of facts took the decision for termination of his service. No illegality was committed in doing so. There by the management took a stand that the claim advanced by the claimant is not maintainable.

The claimant filed replication denying the stand of the management and added that the allegation leveled against him by the informant Bachhi Kumari is all false and the management without waiting for a decision of the court on that allegation took a hasty decision and he had intimated about his detention in judicial custody at the earliest opportunity.

On these rival pleadings these issues were framed for adjudication.

ISSUES

- 1- whether the present proceeding before the Tribunal is maintainable?
- 2- Whether the termination of service of the claimant by order dt 18.08.2018 is illegal and without following the procedure and Rule.
- 3- Whether the claimant/workman is entitled to reinstatement in to service with back wages..
- 4- To what other relief the claimant is entitled to.

The claimant examined himself as WW1 and produced several documents as documentary evidence. Those documents include the copy of the FIR lodged at P S Sagarpur by Bachhi Kumari, the show cause notice served on the claimant, the

reply to the same by the claimant, the order dt18.08.2017 terminating his service, the representation of Bachhi Kumari addressed to the chairman of NDMC requesting removal of the claimant from service and the joining report submitted by the claimant on release from judicial custody. The management examined one of it's section officer as MW1. She also filed documents marked as MW1/1 to MW 1//3. These documents are the office order appointing the claimant and others as RMRs containing the terms and conditions of their service, the Resolution dt 23.11.1989 adopting CCA Rules to the employees of NDMC excluding the casual workers, the intimation received from the Jt Director Vigilance regarding the complaint made against the claimant and that he has been remanded to Tihar Jail, copy of the leave application submitted by the claimant on 23.06.2017, requesting leave from 27.06.2017 to 08.07.2017 and the attendance register of the RM Rs. both the witnesses were cross examined at length.

FINDINGS

Issue No 2

This being the most important issue and decisive for other issues is taken up for consideration at the first instance. Admitted position is that the claimant was absent from duty for the period 27.07.2017 to 09.07.2017 and again from 12.07.2017 to 29.07.2017.the claimant has stated that from 27.07.2017 to 09.07. 2017, he was on leave after intimating his reporting officer the JE and had proceeded to his native place on 24.07 evening as 25th and 26th were public holidays. He returned from leave and reached Delhi on 08.07.2017. but 9th being Sunday joined his duty on 10th. To support the claim and the oral statement the claimant has filed the photo copy of the leave application dt 23.06.2017, marked X which appears to have contained the endorsement of receipt of the JE on the same day. In the said application the claimant had informed his reporting officer about his proposed leave. There is no endorsement on the said document about refusal of leave. This document can not be said to be a self serving document as it contains the signature of the JE. Though the management witness during cross examination stated that there is no provision for the RMRs taking pre approved leave, no Rule or

order to that effect has been proved. The management not even examined the JE concerned to state that the claimant had not intimated him before proceeding on leave. The other document filed by the claimant is the train ticket dt23.06.2017 and the medical prescription of the doctor at his home town to prove that from 23.06.2017 to 08.07.2017, he was on leave and absent from Delhi. The claimant had called for the attendance register of the RMRs for the month of July 2017. The management witness produced the same. It is observed from the said register maintained on daily basis that the claimant had attended his duty on 10th and 11th of July 2017 and thereafter remained absent.

The claimant has stated that suddenly he was arrested on 12.07.2017 and remanded to jail custody by the order of the Magistrate as a case was registered against him at PS Sagarpur Delhi on the FIR lodged by one Bachhi kumari, his land lady alleging certain things falsely. It is the stand of the claimant that the opportunity to contact the family members was denied to him before remand to judicial custody. In such a situation it was beyond his capability to inform the employer about his detention in judicial custody. However soon after release on 29th July, he reported in writing for joining duty explaining the cause of his absence. The respondent instead of taking him on duty served the show cause notice calling him to explain his unauthorized absence. He replied the same. But the respondent did not accept the same and terminated his employment. The report for joining, show cause notice, reply to the same and the order of termination of employment has been placed on record by the claimant as Exts WW1/1M3, WW1/10, WW1/11 and WW1/12. The credibility of these documents have not been disputed by the respondent.

The only argument advanced by the management is that the RMRs are not entitled to approve leave and the claimant had failed to inform about his arrest and the RMRs not being covered under the CCA Rules there was no necessity of initiating inquiry against him. The resolution by which application of CCA rules has been denied to the casual workers has been filed and the same has not been disputed by the claimant. The document filed by the claimant clearly shows that he was released from jail custody on 29th July 2017 and on

01.08.2017 he gave the joining report explaining the absence, which was not accepted and a show cause notice was handed over to him. It is not understood how the respondent fixed the liability on the claimant detained in custody for not reporting the detention, which was the duty of the prosecuting and investigating agency to do so, when the said two agencies had the information about the employment status of the claimant. Hence it is concluded that the claimant cannot be held liable for not informing the employer about his detention in judicial custody which he did soon after his release on bail.

Now coming to the action taken by the employer against the claimant, it is found from the documents relied upon by both the parties that on 04.07.2017 one FIR was registered at PS Sagarpur on the complaint of one Bachhi Kumari against the claimant under section 354, 354B 506 and 509 IPC. Pursuant thereto, the claimant was arrested and remanded to jail custody which is evident from the report of the Deputy Director Vigilance filed by the mgt and admitted by the claimant. The claimant was released from jail on 29.07.2017. On 01.08.2017 he filed a written application to the Junior Engineer Drainage Service Centre CP Division NDMC seeking permission to join. The document contains the endorsement of different departments of the mgt. But the mgt, instead of allowing him to join served a show cause notice on the same day. The show cause notice has been filed as ww1/10. In the said show cause notice there is allegation that Bachhi Kumari a teacher employed in the school of NDMC has alleged sexual harassment by the claimant and on the basis of her report a case was registered and the claimant was arrested. But he failed to report his absence or account of the arrest. The reply of the claimant to this show cause notice has been filed as ww1/11. The claimant gave a detail explanation stating that being in jail custody he could not intimate the office about his detention and soon after the release on bail, he informed the office about the situation by writing a written letter to the JE. This reply was given by the claimant on 04.08.2017. But the respondent did not find the same satisfactory and by office order dated 18.08.2017, which has been marked as ww1/12, terminated his service.

On behalf of the workmen it was argued that the decision was taken unilaterally without any enquiry being held. When the claimant was pleading about the false implication by Bachhi Kumari, at least she should have been called for a statement and an opportunity of questioning her should have been granted to the claimant. But nothing of that kind happened and the mgt in as haste, passed the order on 18.08.2017 terminating his service. The reply of the mgt in this regard is that the claimant was a Muster Roll Employee and the CCA Rule not being applicable, there was no need of conducting any inquiry. It is surprising to note that in the w/s the mgt has taken a stand that the claimant that for the police complaint made by Bachhi Kumari, the claimant was found to have committed mis-conduct and hence the mgt took a decision for termination of his service for such gross mis-conduct. This pleading of the mgt stands far away from the reasoning given in the termination order dated 18.08.2017. This order also stands in a different footing than the contents of the show cause notice. Though in the w/s and show cause noticereference has been made to the police complaint of Bachhi Kumari, leading to a conclusion of gross mis-conduct committed by the claimant, the order of termination nowhere refers to the same. Rather in the termination order it has been specifically stated that a complaint has been forwarded by Bachhi Kumari regarding disobedience, irregular timing and irresponsible behavior during office hours for which his service stands terminated. Neither any show cause notice was issued to the claimant for the alleged disobedience, irregular timing or irresponsible behavior nor any evidence was shown substantiating the same. But the mgt. in a hurried manner passed the order of termination.

It will not be out of place to say that the mgt in the pleading has taken a stand that for the sexual harassment allegation made by one Bachhi Kumari against the claimant his service was terminated. But the mgt never waited for the outcome of the police investigation or criminal trial. Merely because one FIR was lodged and the investigation ensued, the mgt, perhaps came to a conclusion about the proof of the alleged sexual harassment and thus terminated the service, which appears to be the illegal action amounting to unfair labour practice and victimization meted out to the claimant..

The mgt has taken a further stand that the claimant being a casual worker and RMR CCA Rule is not applicable. A resolution to that effect has been filed. It is not disputed that CCA rule is not applicable to the casual workers. But the provisions of section 25F of the ID Act clearly envisages the conditions precedent to the retrenchment of a workman who has been in continuous service for not less than one year under an employer. According to this provision, the claimant was to be given one month notice indicating the reason for retrenchment or one month pay in lieu of notice and retrenchment compensation which shall be equivalent to 15 days average pay for every completed years of continuous service. In this case as admitted by both the parties the claimant was appointed as RMR on 13.08.2014. Prior to that he was working as TMR since the year 2010. It is also admitted that the mgt while terminating the service of the claimant had not complied the provisions of section 25F of the ID Act. On behalf of the claimant reliance has been placed in the case of **NDMC vs Sunil Sharma** decided by the Hon'ble High Court of Delhi by order dated 07.05.2021 in WPC no. 10946/2020 in which it has been held in the following manner

“ it is not longer res integra that if the termination of a workman, employed as a casual or daily wagger is termination simplicitor, procedure laid under Section 25-F of the Act has to be followed and if the foundation is a misconduct, then an inquiry must precede the penalty”.

In the said judgment the Hon'ble High Court of Delhi have referred to the earlier judgment titled as **MCD vs Naresh kumar and ors. (2007SCC unlying, Delhi 1144)**, wherein the Hon'ble High Court whiling dealing with the case of a workman employed as a Chowkidar with the MCD in the capacity of daily wagger/casual/muster role worker, whose service was terminated on the allegation of misconduct, without serving any charge sheet or conducting any domestic enquiry, while upholding the award of the labour court, observed that the action of MCD in not conducting any inquiry prior to issuance of termination order is illegal and nonest. The fact of the said case squarely applies to the case in hand. Since the mgt, in a haste terminated the service of the claimant by

order dated 18.08.2017 without inquiry on the allegation of disobedience, irregular timing and irresponsible behavior which was not established at all by the mgt the order of termination is illegal. The mgt even omitted to mention the reason of termination as the reasons shown in the show cause notice. All these aspects taken together, leads to a conclusion that the service of the claimant was illegally terminated by the mgt in gross violation of the provisions of the ID act and the principle of natural justice were not followed. At least the mgt could have waited for the termination of the criminal case. That having not been done, the one and only conclusion is that the claimant was subjected to unfair labour practice by way of harassment and his service was illegally terminated.

Issue no. 3 and 4

In view of the finding arrived in respect of issue no.2, it is held that the claimant is entitled to the relief of reinstatement into service with continuity of service. But he will not be entitled to back wages on the principle of no work no pay. Hence ordered.

Order

The claim petition be and the same is allowed on contest. It is held that the service of the claimant was illegally terminated by the mgt with effect from 18.08.2017. The mgt is directed to reinstate the claimant in service within one month from the date of publication of this award and grant him continuity of service failing which the claimant would be at liberty of getting the order executed. But no order is passed with regard to the prayer for back wages.

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.
15th May, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
15th May, 2023.