

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. 26/2016

Date of Passing Award- 25.04.2023

Between:

Shri Ram Bahardur, s/o Sh. Gayadeen
R/o V-17, Old Nangal,
Delhi Cantt., New Delhi.

Workman

Versus

1. Chairman,
HQ Delhi Area,
Delhi Cantt—110010.

2. Executive Director,
HQ Delhi Area,
Delhi Cantt-110010.

3. Taurus Station Canteen
25, The Mall,
Delhi Cantt-110010.

Managements

Appearances:-

Shri S.B Shaily,
(A/R)

For the claimant

Shri Santosh Kumar Pandey
(A/R)

For the Management

A W A R D

This is an application u/s 2A filed by the claimant alleging illegal termination by management.

As per the claim statement the claimant was appointed on contractual basis in the management as Goods checker in March 2010 by the canteen management of headquarter Delhi area Taurus Shopping Arcade in station

canteen, Delhi Cantonment. The appointment letter dated 18.03.2010 was issued to him and the agreed remuneration per month was 6000/- . The said appointment was for a period of 9 month i.e upto 18.03.2011. Again by letter no. 31.12.2011, his employment was extended for one year i.e from 31.12.2011 to 30.11.2012. Though the emolument was the same, this time his appointment was as the Driver. Thereafter by letter dated 03.04.2013 his contract as the driver was extended for a further period of 1 year i.e from 03.04.2013 to 02.03.2014 and the emolument was fixed at Rs. 8008/- per month. Thereafter, on 10.03.2014 the mgt again extended the contract of the claimant as the Driver for a further period of 11 months w.e.f 10.03.2014 to 09.2.2015 on fixed emolument @ of 8918/- p.m. When the workman was performing his duties with utmost care and sincerity without giving any scope of complaint, on 11.01.2015 he was served with a show cause notice by the mgt on the basis of complaint received from Major Manish Narayan on 10.1.2015. The claimant submitted the written show cause intimating that on 10.01.2015 he was at the gate of the canteen as the guard when Major Manish Narayan visited CSD canteen with his family. Since, it was the closing time for the canteen the workman informed him the same. But the officer asked him to open the gate and allow him and his family into the canteen. Major Manish Narayan being aggrieved and lodged a complaint against him. The show cause filed by the claimant was perhaps founds satisfactory and thus the mgt took no action against him. While the matter stood thus on 09.02.2015, the mgt asked 17 employee including the claimant working on contract basis to go on a compulsory one month leave. The said direction was complied by the claimant and others. On 07.03.2015 all the 16 employees except the claimant were allowed to join but the mgt refused to take back the claimant for work. The decision was taken to punish the claimant for the baseless complaint received from Mj. Manish Narayan, Thereby an order of dismissal dated 08.02.2015 was served on the claimant dismissing him from service under the title expiry of contract. Being aggrieved the claimant gave representation to the higher officials but the same was not considered. The mgt while terminating his service did not comply the provisions of the ID. Act. No notice of termination, notice pay or termination compensation was paid to him. Since, the action of the mgt in terminating his service was illegal and unjust and arbitrary the claimant raised a dispute before the Labour

commissioner for redressal of the grievance . The attempt for conciliation failed and the claimant filed this petition invoking the provisions of Section 2 A of the ID. Act. In the claim it has been prayed that a direction be issued to the mgt to reinstatement him into service with all consequential benefits and the order of dismissal be set aside.

The mgt when served with the notice appeared and filed the written statement denying the stand of the claimant. The maintainability of the proceeding has been challenged on the ground that this is not a case of termination of service of dismissal but disengagement on expiry of the contract. Hence, the application filed u/s 2 A is not maintainable. It is also stated that the claimant having not being retrenched or dismissed from service he is not entitled to the notice pay, retrenchment compensation etc as claimed by him. The other stand taken by the mgt is that the claimant alongwith others were engaged purely on contract basis and the said contract was for a fixed term. According to the exigencies he was given new appointments on the basis of new contract. On expiry of the last contract the mgt by letter dated 08.02.2015 had given due intimation to the claimant. His engagement was never continuous but intermittent. During the intervening period the claimant was never unemployed but gainfully employed. The claim statement is liable to be dismissed as it is not a case of termination but denial of reemployment of new contract. It has been stated that the claimant was initially appointed as a good checker from 19.03.2010 to 18.03.2011. After expiry of the terms of the contract his service was automatically terminated. He was again appointed as a Driver after a gap of 10 months i.e on 31.12.2011 for a period of one year. After that period he was reemployed for another period of 1 year i.e from 31.12.2011 to 30.12.2012. Again on 3.4.2013 he was appointed as a Driver for a period of 11 months. Thus, the engagement of the claimant was never continuous nor he had worked continuously in the establishment of the management. That being the position the claimant is not entitled to the benefits he has prayed for.

The claimant filed rejoinder denying the stand of the management. It has been stated that he was in continuous employment of the mgt though the

contracts were renewed from time to time and the claimant was appointed sometimes as good checker and sometimes as driver.

On these rival pleadings following issues were framed for adjudication:

ISSUES

1. Whether the termination of the workman is just and proper, if so its effect?
2. Whether the claim is maintainable, if so its effect?
3. Whether the present claim is covered under the provision of Section 2 (oo) (bb) of ID Act. 1947?
4. To what relief the claimant is entitled to?

During the hearing the claimant testified as WW1 and produced a series of documents marked as Exh. WW1/1 to Exh. WW1/9. The documents includes the appointment letter issued to the claimant on different dates which are marked as WW1/1 to WW1/5, the copy of the complaint made by Major Manish Narayan the show cause notice, the reply to the show cause notice, the letter dated 8.02.2015 by the mgt to the claimant intimating him about the expiry of the contract, his show cause etc. On behalf of the mgt one of the officers of Taurus Station Canteen testifies as MW1. No document has been filed by the mgt witness. Both the witnesses are cross examined at length by their adversaries.

At the outset of the argument the Ld. A/R for the management submitted that the entire claim is based upon misconception of facts. The claimant was neither a regular employee nor his service was terminated entitling the claimant to invoke the provision of Section 2 A of the Id. Act. It is a case simpliciter non engagement after expiry of the contract. The Ld. A/R for the workman on the contrary submitted that the claimant is a young person and had worked in the canteen of the mgt from March, 2010 to 09.02.2015. His last drawn emolument per month was 8918/- . The mgt while filing w.s has clearly admitted about non compliance of provision of 25 F, 25 H and 25 N of the ID Act. The same amounts to unfair labour practice meted to the claimant and he is entitled to the

relief of reinstatement with back wages as the mgt is having vacancies and the juniors to the claimant have been reappointed.

FINDINGS

Issue No. 1 and 3.

Since the claimant has alleged illegal termination and the management has counter the same saying that the claimant was not reappointed after expiry of the contract , it has become expedient to examine the nature of the employment of the claimant with the mgt. Before looking into the evidence it is necessary to examine the provision of law section 2(oo) defines retrenchment which means termination by employer of the service of a workman for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action but doesnot includes as stated in clause (bb) the termination of service of the workman as a result of the non renewable of the contract of the 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.

In this case it is a specific stand of the mgt that the claimant was not reemployment after expiry of contract and it was duly intimated to him. The said letter of intimation has been marked by the claimant as Exh. WW1/8. The document is in the nature of intimation to the claimant that his contractual engagement will expire on 9.2.2015 and he will be relieved at 5 p.m of the said date. The claimant has filed the letters of his engagement as Exh. WW1/1 to WW1/5. From these letters it is noticed that the claimant was interviewed on 13.02.2009 and appointed as goods checker on a probation period of 3 months starting from 19.02.2010. In Ex. WW1/1 it was specifically mentioned that on successful completion of probation he will be employed on contract basis for a further period of 9 months. On 19.06.2010 he was appointed for a period of 9 months i.e upto 18.03.2011. The document marked as WW1/3 shows that after a gap of 10 months he was given appointment on 31.12.2011 for a period of 1 year ending on 30.11.2012. Again after a gap of 4 month on 3rd April, 2013 he was given another contract of employment for a period of 11 month w.e.f 3rd April 2013 to 2nd March, 2014 on the monthly remuneration of Rs. 8008/-. This time his

appointment was as a driver. Again after a gap of few days he was appointed as a driver from 10.03.2014 to 9.02.2014 as driver on a monthly remuneration of Rs. 8918/-. The statement of the mgt in the w.s as well as by the MW1 finds corroboration from these documents to the effect that the claimant was never appointed on contractual basis continuously but he was given engagement pursuant to different contract for specific period. His service was never continuous. The cases of the claimant thus vary well false within the exceptional clauses of Section 2 (oo) of ID. Act. The cessation of work of the claimant by the management cannot be held as termination of service or retrenchment of service. The claimant while signing the agreement was very much aware that his engagement is for a fixed term and co terminus with the termination of the contract. Hence, it is concluded that the service of the claimant was never terminated nor he was retrenched from service. Rather the case of the claimant falls under the provision of Section 2(oo) and (bb) of the ID. Act. These two issues are accordingly answered against the claimant.

Issue No. 1 and 4.

The witness examine by the management has stated in clear terms that the service of the claimant was never terminated. When his contract of employment came to an end he was duly intimated by the letter dated 8.02.2015. The said letter has been exhibited by the claimant as WW1/8. The Ld. A/R for the mgt while drawing the attention of this tribunal to the provision of section 25 F and 25 N of the Id. Act submitted that the said provision apply as condition precedent to retrenchment. The case of the claimant doesn't fall under the category of retrenchment but a case of non –renewable of contract. Hence, the provision of section 25 F and 25 N were not applicable in the case of the claimant. The document filed by the claimant as WW1/1 to WW1/5 clearly shows that he was appointed not continuously but intermittently. Hence, the question of working for 240 days doesn't arise which applies to continuous service rendered by the workman. Hence, it is concluded that the claim filed under section 2 A of the ID. Act is not maintainable and the claimant is not entitled to the relief sought for. Hence ordered.

ORDER

The claim filed by the claimant be and the same is dismissed on contest for want of merit. The claimant is held not entitled to the benefits sought for.

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.
25th April, 2023

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