

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. 53/2019**

**Date of Passing Award- 25<sup>th</sup> April, 2023**

Between:

Sh. Umakant Malakar,  
Through NDMC General Mazdoor Union,  
Room No. 95, Barrack No. 1/10 , Jam Nagar House,  
Shahjahan Road, New Delhi-110011.

Workman

Versus

New Delhi Municipal Council,  
Palika Bhawan, Parliament Street,  
New Delhi-110001.

Appearances:-

Shri B. K Prasad,  
(A/R)

For the claimant

Shri Raghvendra Úpadhaya  
(A/R)

For the Management

**A W A R D**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of NDMC, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/247/2018 (IR(DU) dated 12.02.2019 to this tribunal for adjudication to the following effect.

“ Whether the workman is entitled to be reinstated on the post of MALI w.ef 15.11.2014 (date of termination) with full back wages alongwith all consequential benefits

including regularization in the category of unskilled workman ? If so, what relief the workman concerned is entitled to?"

As per the claim statement, the claimant is a visually impaired person had met the Secretary of New Delhi Municipal Corporation on 02/03/2013/ during the public hearing and the secy, considering his physical impairment, allowed him to work as a Mali w. e. f. 04.03. 2013 against the post reserved for employment of physically handicapped persons. Thus the claimant started working as a Mali in the office of the Management at Laxmibai Nagar. No appointment letter was issued to him by the Management. Initially he was paid the remuneration in cash by putting signature on revenue stamps. Subsequently, he was granted the employee code No and since then the Management transferred his remuneration to his Bank account maintained with State Bank of India. But on 15.11.2014, the management without assigning any reason terminated his employment and while doing so the provisions of ID Act as provided u/s 25F, 25G and 25H were not followed. The juniors to the claimant were retained, whereas the service of the claimant was terminated. He made several representations to the management praying reinstatement, but those were not considered. Finding no other way out he approached the union and the union after proper espousal raised a dispute before the labour commissioner. Before the said commissioner, the management appeared and filed objection to the stand taken by the claimant. Attempt was made for conciliation of the dispute, but no fruitful result could be achieved. Hence, for failure of conciliation, the appropriate Govt. referred the matter for adjudication in terms of the reference. The claimant has stated that he has passed the examination of 10<sup>th</sup> standard from CBSE and has been granted a certificate from the appropriate authority for his 100% visual impairment. His candidature should have been considered as a special case by the Management for the order issued by DOPT reserving 3% of the vacancies for physically handicapped persons. Hence a prayer has been made for a direction to the management to reinstate him into service with

full back wages from the date of his illegal termination describing the same as an unfair labour practice.

The management filed WS denying the claim advanced by the claimant. It has been pleaded that the claimant is neither a workman nor the management an Industry. The claimant was never working as a Mali w. e. f. 04.03.2013 as claimed by him. He was working as a Temporary Muster Roll Employee to do the work as and when required. His engagement was purely on need basis and was being done on the approval of the appropriate authority. The management took a policy decision for appointment /regularization of TMR/RMR/Contractual/Casual Employees working for the management. As per the said decision, the workmen who had completed 500 days of work as on 31.01.2014 were conferred the status of Regular Muster Roll Employees. Since the claimant had not completed 500 days of work, his case was kept out of consideration. More over the claimant cannot be granted the relief as claimed since he was never appointed as a Mali which is a regular post on account of his physical impairment. With this the management has prayed for dismissal of the claim.

On these rival pleadings the following issues were framed.

### **ISSUES**

- 1-Whether the proceeding is maintainable.
- 2- Whether the termination of the workman is illegal.
- 3-Whether the workman is entitled to the relief of reinstatement in the post of Mali with full back wages.
- 4- To what other relief, the workman is entitled to.

The claimant testified as WW1 and filed some documents marked as WW1/1 to WW1/ 6. The documents are the certificate of educational qualification and disability of the claimant issued by the appropriate authority. He has also filed the order of DOPT relating to 3% reservation of posts for physically handicapped

persons. Along with this he has also filed the copy of the failure report of conciliation and the resolution of espousal by the union and the representation to the management for reinstatement. At the stage of argument the claimant also filed the copy of the written statement filed by the management before the conciliation officer with the annexure which is the No of days as per the management the claimant had worked as TMR. To supplement the work man has also filed a calculation sheet of working days spent by the claimant as RMR.

On behalf of the management one Jitender Kumar, Deputy Director of Horticulture, NDMC testified as MW1. No document has been placed on record by the Management to support the stand taken in the WS.

At the outset the learned AR for the management submitted that the claimant is not sure about his own stand. In the claim petition he has claimed to have been appointed as a Mali, which is a permanent post in the Management. In the evidence he has claimed benefit for having worked for more than 240 days in a calendar year. While relying on several judgments of the Hon'ble SC including the case of Hindustan Aeronautics Ltd vs Ds Bahadur SinghCA No 2195/2007 decided on 27/04/2007, he argued that the Law is well settled that merely because a person has worked in establishment for 240 days, a right is not created in his favour for regularization. The Hon'ble Appex court have held that the concept of 240 days was to put a restriction on the employer and prevent illegal termination. He also argued that no document or other evidence has been filed by the claimant to prove that he was employed by the management and his service was illegally terminated. It has been argued that the allegation that the juniors were retained but the claimant's service was terminated is also wrong. The management took a policy decision to confer the status of RMR to those TMR who have worked for 500 days or more as on 31/01/2014. Since the claimant could not qualify in terms of the days of work he was not upgraded to the cadre of RMR.

The counter argument advanced by the claimant is that he had worked for more than 500 days as TMR as on 31/01/2014. But he was subjected unfair labour practice by the management. In view of the admission of facts by the management in the WS filed before the conciliation officer and before this Tribunal, the claimant cannot be faulted for not adducing adequate evidence.

## **FINDING**

### **Issue no 1**

The claimant has filed a document relating to espousal of the dispute by the Union. The document marked as WW1/6 has not been challenged by the management. The other challenge is that the claimant is not a workman as defined u/s 2 s of the ID Act. This provision defines” workman “to be a person employed in any Industry for work on hire or reward, may be skilled, unskilled technical or manual work, subject to the conditions mentioned there under. It does not distinguish between regular or temporary workers. This argument as advanced by the management is held not acceptable and accordingly answered in favour of the claimant.

### **Issue No 2&3**

The grievance of the claimant was that considering his impairment, the secy. of the management ordered for his engagement on 02/03/2013 as a Mali and he started working in the office of the Management at Laxmi Nagar. During cross examination he has stated that the nature of the work discharged by him was similar with the regular employees. His job included watering the plants etc, which is basically the job of the Mali. It is true that all along the claimant has stated that he was appointed as a Mali and taking advantage of the same the management has stated that the claimant is illegally demanding the job of a permanent employee and the claim is not supported by any document.

The WS filed by the Management clearly contains the admission of that the claimant was appointed as a TMR by the Management. A similar statement was also made in the WS filed before the conciliation officer which has been filed by the claimant. The management has also admitted that as the TMR an employee code was allotted to the claimant. The statement of the claimant that with reference to the code allotted to him management was making payment in his SBI account has not been disputed by the management.

The only dispute is about the termination of service of the claimant. Whereas the claimant has stated that he had worked for more than 240 days in a calendar year and management terminated his service without complying the provisions of 25F 25 G and 25H of the ID Act, the stand of the management is that for the nature of the engagement which was intermittent and need based, the provisions of ID Act needs no compliance. The management has further stated that a decision was taken by the management to regularize the service of TMR and confer on them the status of RMR ,if a person had worked for 500 days or more before 31.01.2014 as TMR. The claimant could not qualify the standard and there being no work for him his engagement was not extended as was done earlier. The management has disputed the initial date of engagement as stated by the claimant to be 04/03/2013. According to the management the claimant had started working on 18.06.2013 at Laxmi Bai Nagar and as per the available records he had worked for 381 days only as on 15.11.2014. Hence he was not considered for conferment of the RMR status. Though the statement the management is based on available records, surprisingly neither with WS nor while examining the Deputy Director as a witness , the related records were not produced no explanation regarding the same has been offered.

Argument was advanced by the management that it is incumbent upon the workman to prove that he had worked for a particular No of days to get the benefit under law. In this case the

claimant has failed to prove the same. This argument of the management sounds not convincing as the claimant of this proceeding is a visually impaired person fighting the litigation against the mighty employer. There is no dispute on facts that the management has referred to the documents available in their office, relating to the days of work done by the claimant and basing on the said record, claimant was denied the status of RMR. In such a situation, it is the management which could have filed the records for disputing or disproving the stand of the claimant. On the other hand the claimant has filed a calculation showing the no of days year wise and month wise he had worked in the establishment f the management.

In the case of **Gopal Krishanaji Ketkar vs Md Haji Latif and others, AIR 1968 SC 1413**, the Hon'ble SC have held that the burden of proving a fact is on the management as the party in possession of the evidence. It can not rely on the abstract doctrine of onus of proof to disown the responsibility. The same view was later taken by the Hon'ble High Court of Punjab and Haryana in the case of **Balkishan vs Presiding Officer, 1996 (3)SCT,548 and Ramesh Kumar vs P O Industrial Tribunal Panipat & another ,2018 LLR 1229**. Thus in absence of documents which are in the custody of the management, this Tribunal has no hesitation in accepting the claim of the claimant that he had worked for the required No of days entitling him to the benefits granted to his co workers and it is also held that the stand of the management that the claimant having not worked for 500 days preceding to 31.1.2014 was not considered for appointment as the RMR is held unfounded.. The denial by the management to grant the benefits to the claimant at par with the co workers standing in the same footing amounts to unfair labour practice.

Now it is to be examined, what relief the workman is entitled to. The learned AR for the management by drawing attention to the judgment of the Hon'ble SC in the case of D.K. Yadav vs J.M.A Industries Ltd, 1993, LLJ II, 696, submitted that the Hon'ble SC have held that the termination of service of a person

not only impacts his livelihood but also the carrier and livelihood of the dependants. In this case the claimant a visually impaired person was earning his livelihood from the employment with the management. The claimant as a witness has stated that he is having the wife and four children as dependents and he is unemployed since the date of termination of his service and does not have any other source of income. In view of the evidence, it is felt expedient in the interest of justice to issue a direction to the management to confer him the status of RMR w.e.f. 23<sup>rd</sup> September 2014 , when persons standing in the same footing, by office order No I/c CGIT Cell/248/H.A dt 23<sup>rd</sup> Sept 2014,were conferred the RMR status on Group D and grant him all consequential benefits including the remuneration. These two issues are accordingly decided in favour of the claimant.

#### **ISSUE No 4**

In view of the finding arrived in respect of issue no2&3, the claimant is held not entitled to any other relief except as mentioned in the preceding paragraph. Hence ordered.

#### **ORDER**

The reference be and the same is answered in favour of the workman. It is held that the claimant workman is entitled to the status of RMR w.e.f. 23<sup>rd</sup> September 2014 , when persons standing in the same footing, by office order No I/c CGIT Cell/248/H.A dt 23<sup>rd</sup> Sept 2014,were conferred the RMR status on Group D and grant him all consequential benefits including the remuneration. The management is further directed to induct the claimant into the list of RMRs within one month from the date of publication of the award and pay him the financial benefits including the arrear and other consequential benefits within a further period of one month. The arrear shall be paid with a nominal interest of 3% from the date of accrual as the claimant, for the unfair labour practice meted to him, is fighting the litigation since 2014, in different forums. If the amount as



directed, would not be paid within the time stipulated, the same shall carry interest @6% from the date of accrual 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.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
25<sup>th</sup> April, 2023

Presiding Officer.  
CGIT-cum-Labour Court.  
25<sup>th</sup> April, 2023