

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, No. 2 DELHI**

ID No. 71/2020

Sh. Munender Kumar, S/o Late Sh. Mahipal Singh,
Village-Sikanderpur (Bhadi Mazra),
Post office- Jhinhana Rural, Jinhana, Tehsil-Kairanam,
District- Shamli, Uttar Pradesh- 247773.

VERSUS

**The Chief Engineer, Civil Construction Unit,
Ministry of Forest & Climate Change, Govt. of India,**
7th Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road,
New Delhi-110003.

Present: Sh. Nagmani Roy, Ld. AR for the workman.
Sh. Atul Bhardwaj, Ld. AR for the Management.

Award

1. Government of India, Ministry of Labour and Employment has sent the reference in regard to the claimant Sh. Munender Kumar for adjudication. Reference has been worded as:

***“Whether the services of the
workman Sh. Munender Kumar S/o
Late Sh. Mahipal Singh have been
terminated by the management
illegally and/or unjustifiably? And if
so to what relief is he entitled and***

what directions are necessary in this regard?"

Upon receiving of this reference, notice was sent to both the parties. Claimant filed the claim statement stating that he was sponsored by the Employment Exchange, R.K. Puram, New Delhi and was engaged at the post of waterman for a impugned period of 60 days from 10.07.2008 to 07.09.2008 in the office of **Ministry of Environment, forest and climate change, Civil Construction Unit, 7th Floor, ParyavaranBhawan, CGO Complex, Lodhi Road, New Delhi-110003** vide office order no. 29/03/2008/CCU/1047 dated 15.07.2008 on purely temporary basis. He served his duties diligently and honestly for 90 days. Though he was employed for the period of 60 days, but his services had been continued till 24th-25th of October, 2008. He was issued a photo identity Card/pass by Ministry of Home Affairs (Govt. of India) bearing No. Q 32655 Non-Official dated 24.07.2008 for a period of 90 days under the seal of Supervisor, Ministry of Home Affairs. He had signed in the register of Attendance/ Muster Roll. It is the case of workman that during the continuity of his service, a premature child was born and for this, natural leave was sought and was granted to him. He was assured that his service would continue as permanent. When the said child had recovered and he came to join the services in the first week of December, 2008, his services were terminated. He seeks his reinstatement with full back wages.

2. Written Statement has been filed by the respondent. Respondent has taken the preliminary objections stating that claimant has no locus standi for filing the claim because no

industrial dispute was apprehended between claimant and respondent; claim is not maintainable because the respondent performs the sovereign function of Government and does not carry out the activity which can be considered as a trade or business and also does not carry out any activity related to production, distribution or supply of goods or services meant for satisfying the human wants. Claim petition is not maintainable as the claimant has not come with clean hands and concocted the material before this tribunal. No demand notice was served. On merit, it has been stated by the management that claimant was engaged on daily and purely temporary basis from 15.07.2008 to 07.09.2008. He had worked for 15 days in month of July, 2008 and for 20 days in the month of August, 2008 which is evident from the record in the office. An amount of Rs. 2100/- was paid for the month of July, 2008 and Rs. 2800/- for the month of August, 2008 through hand receipts. Workman/claimant didn't work for 90 days, instead he had only worked for 35 days. There was no clause of extension/continuation of period in the order vide letter no. 29/03/2008/CCU/1047 dated 15.07.2008. Management denied that claimant had ever received Rs. 12,600/- from the management as alleged. The workman himself stopped coming to the office after August, 2008. He submits that their claim be dismissed with cost.

3. Claimant has filed the rejoinder denying the averment made by management in his Written Statement and affirmed the facts made in his claim statement.

4. After completion of pleadings vide order dated 10.11.2021, following issues had been framed:

- a. Whether the proceeding is maintainable.
- b. Whether the services of the claimant has been illegally terminated by the management.
- c. To what other relief the claimant is entitled.

5. Claimant was asked to examine its witnesses. Claimant in order to substantiate his claim, had examined himself as WW1/A. In rebuttal, management had also examined one witness i.e. Sh. Rajesh Kumar. Workman has reiterated the facts mentioned in his claim statement. He has relied upon 19 documents and exhibited the same as WW1/1 to WW1/19.

6. Management witness has also reiterated the facts mentioned in written statement and has relied upon five documents in its affidavit of evidence i.e.

(i) **Ex. MW1/1** is the office order showing the appointment letter of the workman for the 60 days i.e. From 10 July to 7 Sep. 2008 @ Rs. 140/- per day.

(ii) **Ex. MW1/2** is the Hand receipts of the payment of Rs. 2100/- and Rs. 2800/- to the workman Sh. Munender.

(iii) **Ex. MW1/3** is the information sought by the workman Sh. Munender under the RTI.

(iv) **Ex. MW1/4** is the office memorandum regarding the grievance of the appointment of the workman Sh. Munender.

(v) **Ex. MW1/5** is the engagement of waterman on daily wages.

7. Claimant's whole case is based upon the fact that he was appointed as "Waterman" by the respondent for the period

of 90 days and his services have been disengaged without any fault. He submitted that he has received the wages in total Rs. 12,600/- for his services for July, 2008 to October, 2008. His services were illegally terminated on 04.12.2008. While, the case of the respondent is that workman was only appointed on daily wages for the period of 60 days and thereafter, his services have been discontinued.

8. In this respect, the word “retrenchment which has been defined in Section 2(oo) of the I.D Act is required to be reproduced herein:

Section 2(oo):

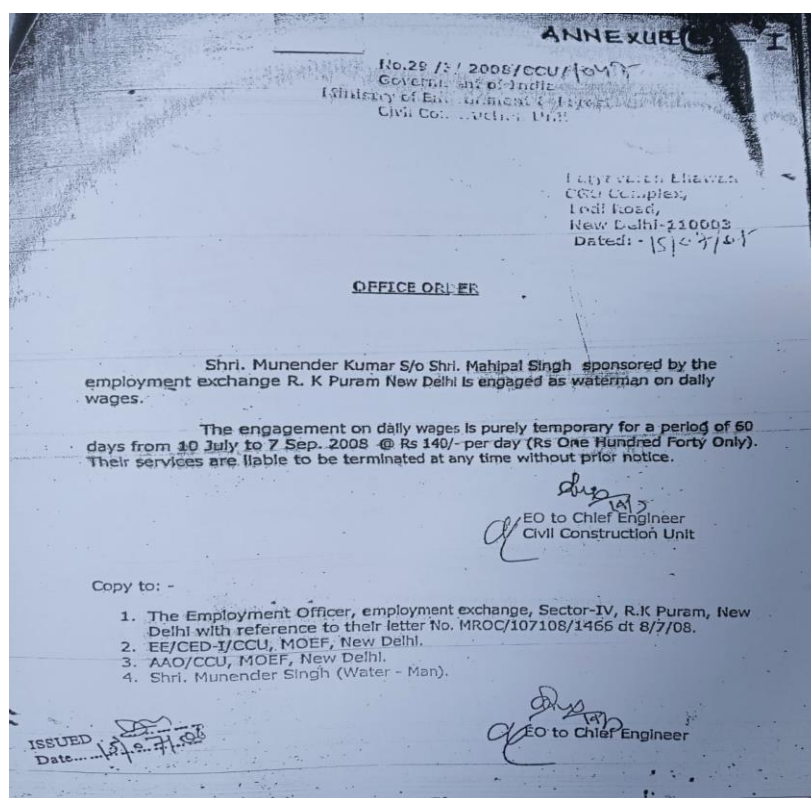
“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (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***
- (c) termination of the service of the workman as a result of the on-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]***

(d) termination of the service of a workman on the ground of continued ill-health;]

9. Clause-(a), (b), (bb) and (c) have been carved out the exception from the definition of the retrenchment. Clause 2 (bb) which has been inserted by the Act 49 of 1984 w.e.f. 18.08.1984 had stated that when the services 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.

10. Ex. MW1/1 which has been admitted by both the parties is the appointment letter. The same is pasted herein below:



11. From the Ex. MW1/1, it appears that, though, the workman was sponsored by the employment exchange of R.K. Puram, New Delhi, but his engagement on daily wages was only for a period of 60 days from 10 July to 7 Sep., 2008 @ Rs. 140/- per day.

12. Ex. MW1/2 is the receipts of the payments, wherein Rs. 2100/- and Rs. 2800/- were paid to the workman for the work he had done.

13. Workman has not produced any record that his services were extended thereafter at any point of time. His contention is that he was terminated on 04.12.2008. However, that fact has not been corroborated by any evidence. Workman himself admitted in his cross-examination that, during the course of employment, he was getting Rs. 140 per day. He further submitted that, he had applied leave for ten days and his application was made on 25.10.2008, but, he has not produced the same.

14. In the said circumstances, it can only be said that the workman contract has not been renewed after two months. He was paid the amount of Rs. 49,000/- in respect of his work done during that period. Even, if the workman assertion has been taken as true that he has worked and his services have been terminated on 04.12.2008 then, also he has not been given any protection. For getting protection against their termination, claimant has to complete 240 days in a calendar year. Section 25-F has put the condition precedent to the retrenchment of the workman. The text of Section 25-F is required to be reproduced herein:

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

15. The above text reveals that the workman employed in an industry cannot be terminated who has been in continuous service for not less than one year under an employer without fulfilling the condition of (a), (b) & (c).

16. In the case in hand, the claimant himself admitted that he had served only for four months. Therefore, even, he assumed that he had worked for four months, then also his services cannot be said to be terminated illegally.

17. In view of the above facts on record, issue no. 1 which is regarding the maintainability of the proceeding decided against the workman and in favour of the management.

18. In view of the above facts on record, Issue no. 2 & 3 are not required to be decided.

19. In these circumstances, claim petition filed by the claimant in pursuance to the reference received stands dismissed. Reference is answered accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the I.D. Act, 1947. Record of this file is consigned to record room.

Date: 25.06.2025

ATUL KUMAR GARG
(Presiding officer)
CGIT-Cum-Labour Court-II