

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. 155/2012

Date of Passing Award- 26th April, 2023

Between:

Shri Arvind Solanki, S/o Sh. Harfool Singh,
Vill & PO Chola, Distt.,
Bulandshahr (U.P.)
Substituted by LR's namely.
Jagwati W/o Late Arvind Kumar Solanki.

Workman

Versus

Managing Director,
Bharat Immunological Corporation Ltd.,
Vill. Chaula,
Bulandshahr (U.P).

General Manager,
Bharat Immunological Corporation Ltd.,
Vill. Chaula,
Bulandshahr (U.P).

Managements.

Appearances:-

Shri Satish Kumar Sharma , Ld .A/R for the claimant.

None 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 Bharat Immunological Corporation Ltd., 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-42012/26/2012 (IR(DU)) dated 15.10.2012 to this tribunal for adjudication to the following effect.

“ Whether the action of management in terminating services of workman Sh. Arvind Solanki S/o Harfool Singh without complying with provisions of 25 F , 25 N is illegal and unjustified? If so, what relief he is entitled to?”

As per the claim statement the claimant Arvind Kumar Solanki (Since dead and substituted by wife Smt. Jagwati) was initially appointed 28.10.1998 as a casual labour in the establishment of the mgt for doing the work of grass cutting and general cleaning in the premises of the mgt. He was discharging a perennial of work. At the time of initial appointment the mgt had obtained the signature of the workman on some plain papers and on some vouchers on the pretext that EPF and ESI subscriptions shall be made for him. But in fact except the ESI subscription no other benefit was granted to him by the mgt. The claimant during the course of employment had completed 240 days of continuous service in a calendar year for 3 consecutive years. Hence, the mgt had paid bonus to him. During this process the claimant had worked continuously from 28.10.1998 to 06.01.2011 as a casual labour. But as per the notification dated 15.06.1985 issued by the Govt. of Uttar Pradesh the service of the claimant should have been made regular with the mgt since his land was acquired by the mgt. But the mgt did not regularize his service

and workman was insisting for the same. This created annoyance in the mind of the mgt and on 07.01.2011 his service was illegally terminated by the mgt. On that day, when he reached the factory premises the security guard did not allow him entry and showed a letter dated 05.01.2011 issued by the Deputy CGM(U) in which it was clearly mentioned that the claimant workman should not be allowed entry into the premises of the mgt to perform his duty. The said action amounts to termination of the service of the claimant who was working continuously from Oct 1998 to Jan 2011. At the time of such termination, the mgt had neither given the notice of termination notice pay, retrenchment compensation gratuity etc. to the claimant in compliance of the provisions of section 25F, 25G and 25H of the ID Act. No disciplinary action was also taken against him before his termination. There were 14 other co-workmen whose services were regularize by the mgt on the ground that there lands were acquired by the mgt along with this claimant. Being aggrieved he had raised a dispute before the Labour Commissioner and on failure of conciliation the appropriate govt. referred the matter to this Tribunal to adjudicate if a service of the claimant has been illegally terminated. Thus in the claim petition the claimant had prayed for an award to the effect that the benefits to which the deceased claimant is entitled to be granted to his legal heirs as per the provisions 25 F and 25N of the Id act along with any other relief which would be proper in the facts and circumstances of the case.

The mgt filed written statement denying the stands of the claimant. The maintainability of the claim has been challenged on the ground that there exists no Industrial Dispute between the claimant and the mgt. It has been specifically stated that the provisions of section 25F 25G and 25H are not applicable since the service of the claimant as admitted by him was on account of non performance of duty and disobeying the directives of his monitoring officer. The claimant had raised a dispute before the conciliation officer

Dehradun, where it was pointed out that the claimant was working as a casual labour/daily wager for grass cutting and maintenance of garden. He had worked for a short period as a casual worker and paid wage for the said period. Neither he was a regular employee nor the nature of work executed by him was perennial. Rather the engagement was need based. Hence, the service of the claimant came to an end automatically when there was no work. The claimant of the claimant for reinstatement and continuity of service not maintainable. It has also been stated that the mgt is a public sector undertaking having its own rules for recruitment into regular post. The claimant was never appointed as a regular employee. Not only that the claimant had not completed 240 days of work in the preceding calendar year of the alleged termination and as such notice u/s 25F of the ID Act or any kind of compensation was payable to him. This claimant along with few other workers was found stealing valuable articles from the premises of the mgt and for the said incident FIRE was lodged. For loss of confidence the engagement of the claimant was discontinued the claimant has not come up with clean hands. Initially he had filed the claim petition claiming his appointment as an Assistant. On realization of the mistake he amended the claim petition. Hence, the reliefs sought cannot be granted to him.

The claimant filed written replication to the w.s of the mgt in which it has been explained that the amendment was for correction of some bona fide mistakes and the earlier claim petition in view of the amendment cannot be looked into.

On these rival pleadings the following issues are framed for adjudication.

Issues

1. Whether the action of the mgt in non engaging the claimant amounts to punitive action

2. Whether the claimant had completed 240 days continuous service in a calendar year with the mgt.

3. As in terms of reference.

The claimant since died his wife Jagwati testified as WW1. She proved the documents marked in a series of ww1/1 to ww1/8. The witness was cross examined at length by the mgt. After closer of the evidence of the claimant, when the mgt was called upon to adduce evidence, none turned up to adduce evidence and the mgt evidence was closed by order dated 13.10.2022.

Findings

Issue no.1

It is the stand of the claimant that he was engaged as a casual worker on daily wage basis on 28.10.1998. Though no document has been produced by the claimant to prove the said engagement, the mgt while filling w.s has admitted the date of initial engagement. The mgt has also admitted in the pleading that the claimant was engaged as a casual worker on daily wage basis for maintenance of the garden and grass cutting. It has been alleged by the claimant that on 07.01.2011 when he reported for work the security guard did not allow him entry and show him a letter dated 05.01.2011 issued by the Deputy CGM R.K Shukla directing that four persons should not be allowed to enter and discharge duty. The said letter has been marked as ww1/7. The claimant has asserted that the list does not contain the name of the claimant Arvind Kumar Solanki. But he was not allowed to work. In the w.s the mgt has stated that for the unruly behavior of the claimant and his involvement in a theft case a decision was taken not to allow the claimant into the premises of the mgt and as such his service was discontinued. The other stand taken by the mgt is that the engagement of the claimant was need based and for non availability of the work his service was discontinued. But

surprisingly, no evidence has been adduced by the mgt to prove that the claimant was ever involved in a case of theft or any dissatisfaction was expressed by the supervising over about his non performance. The stand taken in the w.s justifying the action stands not proved. Accordingly it is held that the decision of the mgt in not engaging the claimant who was working continuously from 28.10.1998 to 06.01.2011 without any justification is illegal. This issue is answer in favour of the claimant.

Issue no.2

The claimant has stated that during his employment he had completed working for 240 days in a calendar year including the year preceding to his termination. The termination becomes illegal for non compliance of the provisions of the 25FR of the ID Act. In the w.s, the mgt has taken a plea that the claimant had never worked for 240 days in a calendar and thus there was no need of complying the provisions of 25F or 25N of the ID Act. Besides the oral statement, the claimant had filed the photo copies of the few pages of the attendance register. The claimant had filed an application for a direction to the mgt to produce the attendance register but the mgt denied possession of the same. The photo copy of the attendance register filed by the claimant proves that the attendance register in respect of the claimant and other casual workers was being maintained by the mgt. Hence it is concluded that the mgt is guilty of suppressing the material documents. In the oral testimony, the claimant has stated that he had completed 240 days in a calendar year and as such the mgt had paid him bonus. To prove this aspect the document has been filed as WW1/4. During cross examination the mgt has not disputed the contents of this document. Hence from the oral evidence coupled with the documents filed by the claimant it is proved that the claimant had worked for 240 days in the calendar year preceding to his termination which had earned him bonus in the year 2010 as stated in the documents marked as WW1/4 issued from

the establishment section of the mgt the issue is also answered in favour of the workman.

Issue no. 3

The reference has been received to adjudicate on the legality of the termination of the Service of the claimant and what relief he is entitled to. The claimant while adducing oral evidence has stated that his land was acquired by the mgt and the govt. of Uttar Pradesh has issued a GO directing grant of permanent employment to the persons by the mgt whose land has been acquired. The claimant has filed the said GO as WW1/6. In addition to that he has stated that 14 persons standing in the same footing have been regularized in service by the mgt. But absolute evidence has been adduced by the claimant to prove that the policy of the Govt. for giving permanent employment to the land oustees is still in force. Thus, the claim of the claimant for absorbing him in a regular post on account of land acquisition since not legally justified.

In the preceding paragraph it has been held that the termination of the service of the claimant by the mgt is illegal for non compliance of the provisions of section 25F of the ID Act which is mandatory in nature as has been held by the Hon'ble supreme court in the case **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd. (2014 LAB.I.C. 2643 Supreme Court)**. Now it is to be seen what relief the claimant is entitled to on account of the said illegal termination. The Hon'ble Apex Court in case "Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya" has held as under:

The propositions which can be culled out from the aforementioned judgments are:

- I) In cases of wrongful termination of service, reinstatement without continuity of service and back wages is the normal rule.

- II) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court to visit instance on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled lat that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

In this case the oral evidence of the workman proves that he is unemployed and having no source of income. No rebuttle evidence has been adduced by the mgt. in the case of Anoop Sharma vs. Executive Engineer Public Health Division Panipat(2010) 5SSF497) the Hon’ble Apex Court have further held that when the termination of service happens without complying the provisions of section 25F the action of termination becomes nullity and the employee is entitled to continue in the employment as if his service was never terminated. The Hon’b Apex Court in other cases have also stated that factors which are to be considered while deciding the claim of the claimant for full back wages. The factors are the length of service the nature of the work whether regular or perennial, temporary or seasonal nature etc. In this case the claimant had worked for the mgt from 1998 to 2011 i.e. for a period of 14 years. The claim of the claimant that he was discharging function of perennial nature has remained unrebutted. Hence, the Tribunal from the evidence adduced on record is of the opinion that the claimant should be reinstated in to service with full back wages. This issue is accordingly answered in favour of the claimant. Hence ordered.

Order

The claim be and the same is allowed in favor of the claimant. It is held that the service of the claimant was illegally terminated by the mgt in complete violation of the provisions of 25 F and 25N of the ID Act and for his unemployment he is required to be reinstated into service with full back wages. But in this case, the claimant Arvind Kumar Solanki since died during the pendency of the dispute the mgt is directed to notionally reinstated him into service from the date of illegal termination and grant him full back wages within 2 months from the date of publication of the award without interest. The monetary entitlements of the deceased claimant shall be paid to his legal heir Smt. Jagwati who has been substituted as the legal heir in this proceeding. It is made clear that the benefits payable to the claimant if would not be paid within the time stipulated, the same shall carry interest @of 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.
26th April, 2023

Presiding Officer.
CGIT-cum-Labour Court.
26th April, 2023