# BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM – LABOUR COURT NO. II, NEW DELHI

**I.D. No. 106/2019**

**Smt. Sushila vs. D.I.A.L. and Ors.**

**Smt. Sushila, W/o Sh. Suraj Singh.**
R/o- RZ-22, Agarwal Colony Near Anaj Mandi,
Najafgarh, Delhi.
**Through- Hindustan Engineering and General Mazdoor Union,**
Head Office: D-2/24, Sultanpuri, Delhi-110086.

…Applicant/Claimant

Versus

1. **Delhi International Airport Pvt. Ltd.**
   New Udaan Bhawan, Opp. A.T.S. IGI Airport, New Delhi-110037.
2. **Updater Services Pvt. Ltd.**
   18/14, East of Kailash Sapna Cinema, New Delhi-11049.
3. **Avon Facility Management Services Ltd.**
   B1/1-1, 1st Floor, Mohan Industrial Estate, Near Badarpur Border, New Delhi-11044.
4. **Quess Corp. Limited.**
   B1/1-1, 1st Floor, Mohan Industrial Estate, Near Badarpur Border, New Delhi-11044.

…Managements/respondents

**Counsels:**
For Applicant/ Claimant*:*
*Sh. Kailash Jonwal, Ld. AR.*

For Managements/ Respondents*:*
*Sh. Manish Sehrawat, Ld. AR for DIAL (management-1).*
*None for Updater Services Pvt. Ltd., Avon Facility Management Services Ltd. and Quess Corp. Limited (as ex-parte).*

**Award**
**26.06.2025**

The claimant filed an application under section **2-A of Industrial Disputes Act, 1947 (Herein after referred to as 'the Act')**. The claimant claimed to have worked with the managements since 01.05.2010 as a house keeper at the last drawn salary of Rs. 10,000/- per month. Management-1 entered into contracts with management-2, 3 & 4, whereby management-1 authorized management-2, 3 & 4 for to carry out maintenance and housekeeping work. The claimant had been regularly working there and management-1 had supervision and control over the claimant. The managements failed to provide the claimant with legal facilities such as appointment letter, attendance card, overtime, dearness allowance, wages slip, Identity card, E.S.I. card, casual leaves, earned leaves etc. When the claimant demanded these, the managements became annoyed and terminated her services on 20.09.2018 without assigning any reason. It was also submitted that the managements didn't issue any charge-sheet before her termination. Consequently, she made prayer that she be reinstated with full back wages.

In response, management-1 filed a reply contending that it is liable to be deleted from the array of parties, as the claimant was not employed by it. It was stated that the claimant was under direct control of management-2 to 4, as admitted in her claim statement. It was further stated that it is a separate legal entity and a private ltd. company incorporated under the provisions of the companies Act, 1956, and is merely a lessee of the IGI Airport, New Delhi as per the Operation Maintenance and Development Agreement (OMDA) dated 04.04.2006 with the Airport Authority of India. It was submitted that management-1 had entered into a service agreement with management-2 (Updater Services Pvt. Ltd.) on 28.04.2010. Thereafter, on the expiry of the said contract, management-1 entered into an agreement with management-3 (M/s Avon Facility Management Services Pvt. Ltd.) on 25.01.2014.

Later, M/s Avon Facility Management Services Pvt. Ltd. changed its name to M/s Quess Corp. Ltd., which is impleaded as management-4.

Management-2 and management-3 and 4 had not appeared since the beginning of the proceedings and were proceeded ex-parte. It is a matter of record that a representative of management-3 & 4 had appeared on several dates, i.e. 28.03.2022, 11.10.2022, 05.12.2022 and 19.09.2023, but he failed to take appropriate steps to set aside the ex-parte order. In between, the claimant's request under order VI rule 17 CPC was allowed, and the amended claim statement was filed, followed by an amended written statement from management-2 and a rejoinder from the claimant.

After completion of pleadings, following issues were framed for adjudication:

i. Whether the proceeding is maintainable.
ii. Whether there exists employer and employee relationship between the claimant and the management-1.
iii. Whether the claimant was serving under the control of management-2 to 4.
iv. Whether the service of the claimant was illegally terminated by management-1.
v. To what relief the claimant is entitled to and from whom.

In order to prove her case, the claimant entered the witness box and reiterated her claim of illegal termination after nine years of service. She relied upon the following documents:

- Copy of demand notice is Exhibit WWI/1(OSR).
- Copy of postal receipts are Exhibit WW1/2 to WW1/5(OSR).
- Copy of Claim petition file before the Assistant Labour Commissioner is Exhibit WW1/6(OSR).
- Copy of pay slip is Exhibit WW1/7 (OSR).
- Copy of I-Card are Exhibit WW1/8(OSR).
- copy of ESI card is Exhibit WW1/9(OSR).
- Copy of Gate Pass is Exhibit WW1/I0 (OSR).
- Copy of failure Report is Exhibit WWI/11(OSR).

The claimant was cross-examined by management-1 (DIAL). She admitted that:

- No appointment letter was issued to her by management-1.
- No salary was ever given to her by management-1.
- No termination letter was issued to her by management-1.
- She didn't place any delivery report of Ex. WW1/2 on record.
- The documents that she relied upon and exhibited were not issued by management-1.
- She denied that there was no employee-employer relationship between her and management-1.

Management-1 examined, Sh. Chanchal Kumar, working as a manager (HR), reiterated that the claimant was under direct control of management-2 to 4, as admitted by the claimant and she was appointed by the said managements directly. He further submitted that management-1 had entered into a service agreement with management-2 on 28.04.2010 and after expiry of the said contract, entered into an agreement with the management-3 i.e. M/s Avon Facility Management Services Pvt. Ltd. on 25.01.2014. M/s Avon Facility Management Services Pvt. Ltd. changed its name to M/s Quess Corp. Ltd. (management-4). It is further submitted that the claimant is not an employee of management-1 as no relationship of employer-employee ever existed. He relied upon the following documents :

- Ex. MW1/1- copy of agreement dated 28.04.2010
- Ex. MW1/2 (colly)- Certificates dated 27.04.2006, 04.09.2017 and 12.06.2018.
- Ex. MW1/3 (colly)- copy of license dated 19.11.2015, 17.04.2017, 09.06.2017, 18.07.2017, 28.09.2017, 22.05.2018, 14.08.2018 and 19.02.2018.

Further, the witness denied that management-1 had supervision and control over the claimant. Although, the management used to verify the records of the salary paid by the contractors to the claimant at the time of furnishing the invoice.

Whole case of the claimant rests on the premise that she had worked with management-1 for the last nine years i.e. 2010 to 2018 and her services were terminated on 20.09.2018 without any rhyme or

reason. No charge sheet was issued to her prior to termination. Accordingly, she contended that she was terminated in violation of section 25F of the Act. As such, she seeks reinstatement with full wages.

On the other hand, the whole case of management-1 rests on the premise that no relationship of employer and employee existed between them and the claimant. It neither appointed the claimant, nor did it have any control over the claimant. It is further submitted that the claimant himself accepted that she was not appointed by management-1. Management-1's role was only to verify the records of the salary paid by the contractor to the claimant at the time of furnishing the invoice. Management-1 relied upon the judgment passed by the Hon'ble Supreme Court of India on 28.08.2014 in **Balwant Rai Saluja vs. Air India Ltd. (2014) 9 SCC 407,** where it was held as under:

> *"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter-alia:*
>
> 1. *Who appoints the workers;*
> 2. *Who pays the salary/remuneration;*
> 3. *Who has the authority to dismiss;*
> 4. *Who can take disciplinary action;*
> 5. *Whether there is continuity of service; and*
> 6. *Extend of control and supervision, i.e., whether there exists complete control and supervision.*
>
> *"85. Issues regarding appointment of the said workmen, their dismissal, payment off their salaries, etc. are within control of the HCI. It cannot be said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.*

In light of the above discussion, my issue-wise findings are as follows:

**Issue no.-1**

From the preponderance of evidence, it is held that proceedings are maintainable before this tribunal because the claimant was employed for house-keeping work.

**Issue no.-2**

This issue goes in favour of management-1 because the claimant himself admitted that no appointment letter was issued to her nor was her salary paid by management-1. Moreover, management-1 took the plea that their only job was to verify the records of the salary paid by the contractors (management-2 to 4) to the claimant at the time of furnishing the invoice. The claimant has not challenged the testimony of management-1 in this respect. Therefore, there is no doubt that management-1 had no control or supervision over the claimant. Moreover, the claimant placed on record the wages slip issued by management-3. Therefore, issue no.-2 is decided in favour of management-1 and against the claimant.

**Issue no.-3**

The claimant didn't challenge the testimony of management-1 that management-1 had earlier entered into a service agreement with management-2 on 28.04.2010 and after expiry of the said contract, entered into an agreement with the management-3 i.e. M/s Avon Facility Management Services Pvt. Ltd. on 25.01.2014 which changed its name to M/s Quess Corp. Ltd. (management-4) later. The document Ex. WW1/7 is a pay slip issued to the claimant by management-3 & 4. Management-3 & 4 failed to contest the case. However, on 28.03.2022, 11.10.2022, 05.12.2022 and 19.09.2023, a representative for management-3 & 4 had appeared but he failed to take appropriate steps for setting aside the ex-parte order. Therefore, it is established that Ex. WW1/7 is a pay slip issued by management-3. During the course of arguments, AR for the claimant placed on record the written statement filed by management-3 & 4 before the Assistant Labour Commissioner, wherein it stated that the claimant committed an act of serious and grave misconduct for which she was charge-sheeted vide charge-sheet dated 27.09.2018 and called for submissions of her explanation to the charges as mentioned in the charge-sheet. Wherein she submitted her explanation and admitted all the charges as mentioned in the charge-sheet. Therefore, after taking into account of gravity of misconduct

committed by the claimant, the management lost its faith upon the claimant and decided to terminate her services. Evidence produced by the claimant established that their existed a relationship of employee-employer between him and management-3 & 4. Therefore, it is held that the claimant was working under the control of management-3 & 4.

**Issue no.-4**

Section 2(oo) defines the term 'retrenchment' while section 25F of the Act has set out the conditions to be complied by an employer before retrenching a workman. Definition of section 2(oo) and section 25F of Act are as follows:

> ***[(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***
>
> ***[(bb) termination of the service 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 or of such contract being terminated under a stipulation in that behalf contained therein; or] (***
>
> ***c) termination of the service of a workman on the ground of continued ill-health;]***
>
> ***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 2 [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 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].***

The said section itself created four exceptions where the termination of services of the claimant has not come within the definition of 'retrenchment'. The section itself creates a bar upon the retrenchment when the services were terminated by way of punishment. The documents placed by the claimant during course of arguments suggests it was submitted by Management-3 & 4 before the Assistant Labour Commissioner that the claimant was charge-sheeted and punishment was inflicted upon her, but it failed to bring the facts before this Tribunal. Therefore, the termination of services of the claimant by Management-3 & 4 is held to be illegal, as Management-3 & 4 failed to comply with any provisions of Section 25F of the Act, which is a mandatory condition. First, if it intended to retrench the claimant, then it should have given prior notice of at least one month, or in lieu of one month pay. Additionally, the management was also required to pay the retrenchment compensation of 15 days' salary of each completed year

of service. However, it failed to do so. Therefore, it is proved that the claimant's services were retrenched illegally by Management-3 & 4.

**Issue no.-5**

Now, the question that arises is what relief the claimant is entitled to and from whom. As a general rule, when termination is declared illegal, the appropriate relief is **reinstatement with full back wages**. However, much time has already passed and there is no positive evidence that the claimant was unemployed since her termination from service. It is held by the Hon'ble Supreme Court of India in the case titled as **Employers, Management of central P & D Inst. Ltd. Vs Union of India & Another, AIR 2005 Supreme Court 633** that it is not always mandatory to order reinstatement even after the termination is held illegal. Instead, compensation can be granted by the industrial adjudicator. Similar views were expressed by Hon'ble High Court of Delhi in the case titled as **Indian Hydraulic Industries Pvt. Ltd. Vs. Kishan Devi and Bhagwati Devi & Ors., ILR (2007) Delhi 219** wherein it was held by the court that even if the termination of a claimant is held illegal, the industrial adjudicator is not supposed to direct reinstatement along with full back wages and the relief can be moulded according to the facts and circumstances of each case and the court can allow compensation to the claimant instead of reinstatement with back wages. Same view has been expressed by the Apex Court in **Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik 2025 Latest Caselaw 157 SC** stating that upon dismissal, being set aside by a court of Law, reinstatement with full back wages is not an automatic relief. In some cases, lump sum compensation is a better relief.

Circumstances suggest that the claimant had worked with the managements for almost eight years for housekeeping work. Housekeeping job is a job which cannot be said to be available easily. However, when one's services have been terminated then, one faces a lot of difficulty in finding a new Job. Given these circumstances when the claimant's services were terminated in breach of section 25F of the Act, a lump sum compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only) is considered an appropriate relief. Hence, management-3 & 4 is hereby

directed to pay a compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only) to the claimant within two months of notification of this award, failing which the management shall also pay interest @ 8% per annum on the aforesaid amount from the date of award till the date of realization. A copy of this award be sent to the appropriate government for notification U/S 17 of the I.D Act. The file is consigned to record room.

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II

Dated 26.06.2025