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

ID No. 244/2019

Sh. Rajender Singh Panwar vs. Engineering India Ltd. and Anr.

Sh. Rajender Singh Panwar,
S/o Sh. Ranjit Singh Panwar,
R/o-1119/45, DDA Flat Kalkaji, New Delhi-110019.

…Applicant/Claimant

Versus

1. Engineering India Ltd.
   Engineers India Bhawan,
   01, Bhikaji Cama Place, New Delhi-110066.

2. G-4S Facility Services Pvt. Ltd.
   Plot No.-227, Block-A, 01st Floor, Sector-17,
   Dwarka, New Delhi-110078.

… Managements/respondents

Counsels:
For Applicant/ Claimant*:*
Sh. Sunil Kumar, Ld. AR.

For Management/ Respondent*:*
Sh. Abhishek Verma and Sh. Tarun, Ld. ARs for management-1 (EIL).
Management-2 (G-4S Facility Services Pvt. Ltd.) was proceeded ex-parte.

Award
29.05.2025

The present petition has been filed under section **2-A of Industrial Disputes Act, 1947 (Herein after referred as 'the Act').** The claimant submits that he was employed as a driver with *G-4S Facility Services Pvt.*

Ltd. for five years and was deputed at the premises of **Management-1** His last drawn salary was Rs. 12,800/-. He performed his duty with utmost satisfaction with the management and no complaint was ever received from the management during his service tenure. However, the management refused to give him duty and terminated his services w.e.f. 31.08.2017 without any valid reason, any prior notice and in violation of **section 25F, G and H of the Act**. Therefore, he seeks reinstatement with full back wages and requests that his termination be declared illegal.

In response to the claim, management-1 filed a reply opposing that the claim against them is totally false, wrong and misconceived. There was no breach of any contractual obligation or contravention of any provision of labour law that can be imputed upon the answering respondent. In fact, management-1 had executed a master lease agreement dated 11.11.2023 with **lease Plan India Pvt. Ltd. (LPIN)**, a company incorporated under the companies Act, 1956, whereby LPIN indemnified management-1 against any and all loss, costs, claims, damages etc. As per article 2.2(x) of the agreement, chauffeurs were to be provided by LPIN through an external agency, namely M/s G4S Facility services (India) Pvt. Ltd. Accordingly, management-1 submitted that there was no employer-employee relationship between them and the claimant.

Management-2 failed to appear in the proceedings and was proceeded ex-parte.

From pleadings of the parties, following issues were framed for adjudication:

1. Whether the proceeding is maintainable for non-joinder of parties.
2. Whether there exists employer and employee relationship between respondent-1 (Engineers India Ltd.) and the claimant.
3. Whether the service of the claimant was illegally terminated by management-1.
4. To what relief the claimant is entitled to and from which date.

In order to prove his claim, the claimant examined himself by appearing in the witness box, reiterating the stand taken by him in the claim statement. He relied upon six documents which are as follows:

1. Copy of failure report under section 2-A of the Act dated 16.07.2019 (Ex. WW1/1).
2. Complaint filed before ALC dated 03.07.2018 (Ex. WW1/2).
3. A copy of the Identity Card issued by management-2 (G4S Facility Services Pvt. Ltd.). (Mark A).
4. Pay slip from August 2016 to June 2017 (Colly). (Ex. WW1/3).
5. A copy of pay slip of July 2017. (Mark B).
6. Attendance sheet from November 2013 to August 2017 of the claimants maintained by management-2 (G4S Facility). (Mark C).

In rebuttal, management-1 (EIL) had examined one witness, Sh. Karan Deep, the management's witness took the same stand as mentioned in the written statement that there no employer-employee relationship existed between management-1 and the claimant.

The claimant argues that he was engaged by management-1 through management-2 (contractor), and his services were terminated illegally by management-2. On the contrary, management-1 has rested its arguments on the premise that there didn't exist any employee-employer relationship between them and the claimant, as his agreement was executed through **Lease Plan India Pvt. Ltd. (LPIN)**, whereby LPIN had indemnified management-1 (EIL) against any and all loss, costs, claims, damages, etc. It is further submitted that as per the agreement, chauffeurs were to be provided by LPIN through an external agency viz M/s G4S Facility services (management-2). Lastly, the management submitted that the present claim should be dismissed due to misjoinder of parties.

In light of above arguments and evidence, my issue-wise findings are as under:

Issue no. 1 :

Management-1 took the plea that the claim petition should be dismissed for non-joinder of a party (Lease Plan India Pvt. Ltd). However, in this regard, it has to be considered that the claimant was unaware of any agreement between management-1 (EIL) and LPIN. As per his cross-examination, he was appointed by *G-4S Facility Services Pvt. Ltd* (management-2) and appointed at the premises of management-1. Therefore, the issue that the claim petition is not maintainable for non-joinder of parties, is decided in favor of the claimant, and against the managements.

Issue no. 2 and 3:

Management-1 asserted that there was no employer-employee relationship between them and the claimant. It drew attention of the tribunal towards the claimant's cross-examination, where the claimant admitted that his Identity Card (mark-A) was issued by management-2, and management-1 didn't issue any identity card to him. He further admitted that his Pay Slip (Ex. WW1/3) and attendance sheet (mark-C) were also issued by management-2. It was further stated by him that he had no concern with management-1, and entire control, supervision and payment of salary to the claimant was maintained by management-2. Therefore, no relationship of employee-employer ever existed between the claimant and management-1.

Management-1 relied upon the judgment of **Baburam vs. GNCTD, 2018, SCC Online Del 7243,** where it was held that the burden of proving the existence of employer-employee relationship lies on the person asserting it, and mere self-serving statements are not sufficient without concrete evidence. It also relied upon a decision of Hon'ble Supreme Court of India in the matter of **workmen of Niligiri Coop. Mkt. Society Ltd. v. State of T.N. (2004) 3 SCC 514,** where it was held that burden of proving the existence of employee-employer relationship lies on the person asserting it, and such determination is a pure question of facts, not to be interfered with by the court, unless the finding is clearly erroneous and perverse. Relevant paragraphs are extracted as under:

"Burden of proof

47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. 48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398: (1973) 1 LLJ 366 (Ker)] the Kerala High Court held: (LAB IC p. 402, para 9)

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. In Swapan Das Gupta v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held: (LAB IC para 10)

Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

In this respect, the affidavit of the claimant is self-explanatory where he asserted that he was working as per instructions of management-2 and received his wages from management-2.

Considering the above evidence and the fact, **issue-2 and 3** are decided in favor of management-1 and against the claimant. Therefore, management-1 is not responsible for the claimant's illegal termination.

Issue no.-4

Now the question is what relief the claimant is entitled to. Entire documentary evidence suggests that the claimant was an employee of

management-2 (*G-4S Facility Services Pvt. Ltd)*. Pay slip (Ex. WW1/3) and identity card (mark A) indicate that the claimant was an employee of *G-4S Facility Services Pvt. Ltd.* The attendance sheet from November 2013 to August 2017 (Mark C) also indicates that the claimant was an employee of *G-4S Facility Services Pvt. Ltd.,* as these documents bear official mark of *G-4S Facility Services Pvt. Ltd.*

The claimant stated in his evidence that he was employed with management-2 for the last five years, and has proved the same by documentary evidence showing that his services were terminated w.e.f. 31.08.2017. As management-2 failed to appear and cross-examine the claimant, his statement is presumed to be true. Therefore, it is proved that the claimant was an employee of management-2.

There is no absolute protection provided to a claimant in the Industrial Disputes Act, 1947, against termination. A termination is held to be illegal only if the employer fails to fulfill the conditions prescribed under section 25F of the Act. The relevant provisions of section 25F, G and H of the Act are required to be produced 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 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].***

25G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 4[to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.

Here in the present case, neither one month's notice nor notice pay was given to the claimant before termination, nor was any retrenchment compensation paid. In absence of any evidence contrary to the above statement, statement of the claimant remains uncontested and unrebutted. Therefore, it is held that the claimant's services were terminated illegally and unjustifiably.

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 his 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.

Given these circumstances, a lump sum compensation of Rs. 3,00,000/- (Rupees Three Lakhs Only) is considered an appropriate relief. Hence, management-2 (*G-4S Facility Services Pvt. Ltd.)* is hereby directed to pay a compensation of Rs. 3,00,000/- (Rupees Three 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 29.05.2025