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

I.D. No. 44/2018
Sh. SomPrakashBhardwaj (S.P Bhardwaj),
S/o Sh. Hari Chand,
R/o A-81, Village-Nathupura,
Burrari, North Delhi, Delhi-110084.

Versus

1. The Director General,
Archaeological Survey of India,
24, Tilakmarg, New Delhi-110001.

AWARD Dated:29.07.2024

1. Claimant has filed the claim U/s 2A of the Industrial Disputes Act (herein after refered as an Act). Workman has been claiming to have been working as Monument Attendant (ex-Serviceman) on contractual basis with the office of the **Delhi Circle, Safdarganj Tomb** since 15.03.2012 at the last drawn salary of Rs. 10,000/- per month. His services has been terminated by the management without assigned any reason on 30.06.2017. His fault is only that he had orally requested the management to regularize him as his permanent employee keeping in consideration of the tenure and quality of his services rendered by him. He had sent the demand notice

letter through his counsel to the management for regularisation, reinstatement with full back wages with continuity of the services. However, management did not give any reply. He was finally constrained to approach the Deputy Chief Labour Commissioner/Conciliation Officer, but the management did not settle the dispute with the claimant. Hence, he had filed the present claim petition.

2. Notice of this petition was issued to the respondent. Respondent appeared and filed the W.S. Management had taken several preliminary objection inter-alia that Archaeological Survey of India is neither an industry nor industrial establishment undertaking so as to attract the provisions of I.D Act; Archaeological Survey of India is discharging its duties for the preservation and conversation of ancient and historical monuments and archaeological sites which are declared to be of national importance; Archaeological Survey of India has not violated any provision of the I.D Act and every action is within the ambit of law; reference is bad in law, without application of mind.

3. On merit respondent had admitted that Sh. S.P Bhardwaj was engaged as a Monument Attendant since 15.03.2012 purely on contract basis for watch and ward of the monument protection, cleaning/sweeping of the premises area of the monument, reporting of unauthorized

construction around the monument and others duties assigned by the sub-circle in-charge. Initially his period was purely on contract basis for one year and extendable on satisfactory performance assessed by Archaeological Survey of India (ASI). However, the contract might be terminated by any time, on giving one month notice. His contract was expired on 30.06.2017 and his services were discontinued. However, he had denied that the Archaeological Survey of India (ASI) has been indulging in unfair labour practices and violated the industrial/labour law. He submits that the claim be dismissed. Rejoinder has also been filed by the claimant affirming the averment, what has been stated by him in his claim statement and denied the averment made by the respondent in the WS.

4. After completion of the pleadings following issues have been framed vide order dated 06.02.2019 that is –

1. Whether the proceeding is maintainable and the alleged dispute is an Industrial Dispute.
2. Whether there exists any employer and employee relationship between the respondent & workman.
3. Whether the service of the workman has been illegally terminated by the respondent.
4. Whether the respondent is liable for adopting unfair labour practice.

5. Whether the workman is entitled to the relief of reinstatement with back wages.
6. To what other relief the parties are entitled to.

5. In order to prove his case, workman had appeared in the witness box. He had filed the affidavit in support of his claim. He has reiterated the averment made by him in the claim statement. In rebuttal, management has examined one witness Ms. Kamlesh Devi. He has also reiterated the stand taken by the respondent in his WS. He had relied upon three document i.eMW1/1, MW1/2 and MW1/3.

6. Counsel of the claimant had argued since the management witness had admitted in the cross-examination that he has been continuously working from 15.03.2012 to 30.06.2017; his services records are clean therefore, he had proved that he had worked more than 240 days in a year. Even no notice of termination/discontinuation to the engagement was ever given. This fact is also admitted by the respondent witness herein. Therefore the management has violated the section 25 (F) of the I.D. Act. Even the witness had admitted that benefit of PF and ESI was not extended to the claimant by the management during the course of his engagement. He has further submitted that the management witness has not placed any document to show that the post against

which the claimant was working were filled up through SSC before the dis-engagement of the claimant.

7. Per-contra respondent counsel had advanced the argument stating that the engagement of the workman is purely contractual. On expiry of the contract, his services were discontinued. He submits that discontinuation of the service does not come within the definition of retrenchment, therefore there is no question arises for the illegal termination of the respondent. He submits that the claimant himself admitted in the cross-examination that he does not know whether the **Archaeological Survey of India** is an industry? Even he had submitted that if assumed not admitted that his termination was illegal then also the workman stated that he was getting pension of Rs. 21000/- per month from the service rendered by him in Indian Army.

8. In the light of the above evidence and argument advanced by the respective AR of the party in advance, my issue wise finding are as follows.

Issue no. 1 & 2 have been taken together at the same has been bearing upon each other.

9. At the outset, it is important to mention here that the respondent has taken the plea that the proceeding is not maintainable because the alleged dispute is not an industrial dispute because **Archaeological Survey of India** is discharging his sovereign function. However, keeping the monumental faith and employing the contractual employee for guarding their sites does not come within the purview of sovereign function. If the plea of the management is taken as true then every government function would be exempted from the purview of Industrial Law. Job profile of the workman as mentioned in the contractual employment Ex. WW1/M1 was to protect and cleaning/sweeping of the premises and surrounding of the monument. It is the common knowledge that people use to come to visit the monument for seeing the monument and there is no evidence led by the management contrary to the fact that no one is allowed to visit the above said sites. It is further the common knowledge that visitors visiting the site used to pay the fee. Therefore the management even though, being the government functionaries has come within the definition of an industry if we applied the tripple test. Admittedly the workman was employed by the management on contractual basis from 15.03.2012 initially for one year and his terms have been extended several times, so, the relationship of the employee and employer has been established beyond doubt.

Therefore, these two issues have gone in favour of the workman and against the management.

Issue no.-3 & 4 have been taken together as the same are bearing upon each other. Workman had claimed to have worked with the management from 15.03.2012 to 30.06.2017 on contract basis.

10. Before parting the decision on this issues, text of **Section 2 (oo)** and 25F of the Act are required to be produced 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***

[(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;

section 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].

Definition of retrenchment has been couched in a comprehensive manner. It covers every type of termination of the service of the workman by the employer for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action. The case of voluntary retirement of the workman, retirement on reaching the age of superannuation, termination of service as a result of non-renewal of the contract of employment or of such contract being terminated under a stipulation contained therein or termination of the service of the workman on the ground of continued ill health by condition doesn't fall within the ambit of retrenchment.

11. Management has further taken the plea that the workman service is purely on contract basis, it was stipulated in the initial contract and subsequent contract which were extended from time to time that his services can be terminated at any time without assigning any reason. It has taken the pleas of exception as prescribed in Section 2

(oo) i.e. non renewal of the contract. However, the plea raised by the management in his WS is not tenable because of the fact that the contract had renewed from time to time and has been continued from 15.03.2012 to 30.06.2017. Section 2 (oo) of the Act which defines the definition of retrenchment and contract of employment which has been excluded within the definition of retrenchment shall be for a specific period and for specific purpose. But, admittedly the workman job is in perennial and regular in nature as contract had been extended from time to time. Management witness has also admitted that the workman had worked with them till 30.06.2017. His contention is that his contract was not renewed because, there was a direction from the Head Quarter not to extend his engagement. She also admitted that the claimant during the course of engagement was discharging his duty with sincerity and to the satisfaction of the authority. Management witness has admitted that all such post already were filled through Staff Selection Commission (SSC), even the PF and ESI were not extended

12. Extending of the contract from time to time as reflected from the document produced by the workman and the management clearly established that there is a unfair labour practice adopted by the management. Job of the workman was perennial in nature i.e. cleaning the

monuments of the management at different places. No record has been produced by the management that all the posts in which the workman was working has been filled through SSC. Even, for the sake of assumption, if it is assumed that the posts were filled up by SSC then also management cannot escape from its liability under Industrial Disputes Act. Once it is established that there is an employer-employee relationship between the workman and the management, and the management entering into the contract is not for any specific purpose for specific period then it is assumed that the nature of the work is perennial nature and it has not come within the exception created by the Section 2 (oo) which defines retrenchment. Once the workman has been retrenched from service then prior to retrenchment, management has to follow the principles set out in **Section 25 of the Act.** Section 25F couched in a negative form, imposed a restriction on employer try to retrench the workman and laid down that no workman employed in an industry who has been in a continuous employment for not less than one year under an employer shall be retrenched until he has been given one month notice in writing indicating the reason for retrenchment and the period of notice has been expired or the workman had been paid for the period of notice or he had been paid at the time of retrenchment, compensation equivalent to fifteen day average pay for every completed

year of continuous service or part thereof. Here, admittedly respondent has not done anything.

13. In view of the above discussion the termination of the workman is held illegal in violation of the principle of Section 25F.

Relief

Generally, when the termination is held illegal then naturally reinstatement with full back wages would follow. However, in the present case, workman is a retired army personnel at the time of his deposition, he was 51 year of age now, he is almost 59 year of age, therefore reinstatement cannot be given to him being inappropriate relief in view of the illegal termination of the workman. Therefore, lump sum compensation of Rs. 4,50,000/- (Rupees Four Lac Fifty Thousand only) is an appropriate relief. Award is passed accordingly. Management is directed to pay the above said compensation within four weeks.

ATUL KUMAR GARG
Presiding Officer.
CGIT-cum- Labour Court-II