

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

ID No. 92/2015

Sh. RoshanLal Vs. B.S.N.L.

Counsels:

For Applicant/ Claimant:

None for the claimant.

For Management/ Respondent:

Sh. DipakThukral, Ld. AR for management.

Award Dated: 29.07.2024

1. Sh. P.K. VenuGopal (Section Officer), government of India, Ministry of Labour and Employment vide letter dated 09.09.2014 had sent the reference to this tribunal for disposal in the following words:

‘Whether the action of the management of Dehradun Telecom District, BSNL, Dehradun in retrenchment from the services of workman ShriRoshanLal S/o Sh. Jaya Das w.e.f. 01.08.2012 is legal and justified? If not, what relief the workman is entitled to?’

2. After receiving the reference, both claimant and respondent had been served with the notice. Claimant filed the claim in the present petition stating that he was recruited as a casual labour with Durbhash Kendra, Tyuni (Dehradun) on 01.10.1997 at the rate of 80 rupees/day by Sub-Divisional Engineer Sh. R.S. Kathait. His job was to lay the telephone cables. On 02.03.1998, he was appointed at the monthly pay of Rs. 1200/- but no appointment letter was given. Salary was paid in the bank account. In 2001, name of Durbhash Kendra was changed to Bharat Sanchar Nigam Limited (BSNL). In 2011, claimant’s salary was increased to Rs. 4500/-. He had requested the authority to regularize him but respondent didn’t regularize him, instead he was told in the March 2012 that

General Manager has asked him to remove from service; In case, he wants to work at the rate of Rs. 2500 per month, he will be allowed to work. As such, he had started to work at the above said rate considering his family situation.

3. It is further his case that on 16.09.2011, cable was stolen from Telephone Exchange, Chilhar and letter to that effect was given in his name by the Sub-Divisional Engineer to Dur-Sanchar Dakpatra. On 01.08.2012 when he was going to Vikasnagar from Tyuni for taking his salary, the bus was met with an accident and 27 passengers died in that accident, the claimant was also seriously injured and was admitted in the hospital. On 01.03.2013, when he had come to join his duty after getting fit, he was told that another worker was deployed in his place. He had requested the respondent to take him back on duty but no one paid any heed; as such, he filed the present claim before the Labour Commissioner and his claim was referred to this tribunal for disposal.
4. Respondent had appeared and filed the written statement. He had taken several preliminary objections inter-alia that claimant was never appointed at any post nor was he kept as a daily casual labour; no wages had been paid by the employer. On merit, he denied each and every fact. However, he admitted that in the month of October 2000, Bharat Sanchar Nigam Limited was incorporated. He submits that the claim petition be dismissed.
5. Rejoinder has been filed by the claimant in which he denied the averment made by the respondent in his W.S. and affirmed the averment made by him in the claim statement.
6. From the pleadings of the party vide order dated 05.04.2016, following issues had been framed:
 1. Whether the action of the management of Dehradun Telecom district, BSNL, Dehradun in retrenchment from the services of workman Sh. RoshanLal S/o Sh. Jaya Das, w.e.f. 01.08.2012 is legal and justified? If so its effect?

2.To what relief the workman is entitled to and from which date?

7. Both claimant and respondent had led the evidence in support of their claim and rebuttal. Workman had examined himself as WW1. On behalf of the management, one Vivek Tiwari had come into witness box.
8. On behalf of the claimant, it had been argued that it is a clear example of unfair labour practice adopted by the employer. He had drawn the attention of this tribunal towards a number of documents brought by him in the evidence i.e. photocopy of First Information Report U/s 379 IPC regarding the theft of cable given by Sub-Divisional Engineer, the document of work allotment to him by Divisional Engineer Sh. S.K. Sharma, Nine copies of certificates issued by customers in favour of Sh. RoshanLal, information given to Patwari about the theft, details of the account of the claimant in which an amount of Rs. 4,182/- and Rs. 8719/- was deposited on 17.11.2011 in provident fund. He submits from the evidence he had established that there is a connection between him and respondent of employee and employer otherwise there is no reason as to why these documents are in his possession. He had further drawn the attention of this tribunal towards the cross-examination of the management where management witness submitted that he had no personal knowledge about the claimant Sh. RoshanLal, he didn't know if Sh. RoshanLal was engaged with D.O.T. in the year 1997; he could not say whether in the year 1997 and 1998 Sh. R.S. Chauhan was the Sub-Divisional Engineer and claimant was appointed by him; he didn't admit that D.O.T. became BSNL and all the casual workers for D.O.T. were terminated, even he had no knowledge whether R.S. Chauhan and Sh. R.S. Kathait who were then Sub-Divisional Engineers had re-engaged the claimant for work; he admitted that documents marked X contains the signature of Divisional Engineer Sh. A.K. Sharma and

document marked Y appears to be the report submitted by Mr. Bisht alleging theft of cable.

9. Per contra, respondent had argued that the documents relied by the claimant does not indicate that he was ever employed by the respondent. He submits that the claimant has not produced any appointment letter, wages slip, Identity Card in order to prove employee-employer relationship. His further argument is that respondent being government organization cannot appoint any person without issuing any appointment letter and without following the due procedure of Law; management has a separate procedure of recruitment. He has relied upon the decision of Hon'ble Supreme Court of India in **“workmen of Nilgiri Coop. Mkt. Society Ltd.Vs State of Tamilnadu [(2009) 13 SCC 374]”** and **“Indian Drugs and pharmaceutical Ltd. Vs. workmen, India Drugs & Pharmaceuticals Ltd.”, (2007) 1 SCC 408** and submitted that workman is not entitled to reinstatement with back wages; claim deserves to be dismissed.
10. Before parting with the decision, it is important to mention here that vide order dated 22.07.2019, Ld. Predecessor of this tribunal had passed the award in favour of the workman and against the management because of the fact that management had stopped coming after filing of written statement. On application by management, ex-parte award was set aside subject to the cost of Rs. 5000/-.
11. No doubt, appointment letter, identity card and the documents issued by the respondent are necessary to establish the relationship of employer and employee. However, it is not the sole criteria for establishing the relationship. In most of the cases when the workman was employed as casual labour or in muster roll labour, no document has been issued by the employer. But still he can prove the relationship by brining the circumstances indicating that he was the employee of the employer. In the case of **Chintaman Rao reported in**

1958 (II) LLJ the Hon'ble Supreme Court of India that the concept of employment involves three ingredients. (I) Employer (II) Employee (III) The contract of employment. The employer is one who engages the service of the other person. The employee is one who works for another hire or reward. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. It is control of the management which is necessary element of the relationship of master and servant.

12. In the present case the workman since beginning has maintained that he was working under the control and supervision of the SDE BSNL and discharging the functions of a regular employee. He has also stated so while testifying as WW1. On his behalf photocopies of document have been filed. Management in his evidence has not contradicted. Even the management witness is unaware whether the claimant was engaged with D.O.T in the year 1997; he could not say whether in the year 1997 and 1998, one Sh. R.S Chauhan was the Sub-Divisional Engineer and claimant was appointed by him. The witness is evasive in answer. From the documents produced by the claimant, it is proved that the claimant was working with the management who was later on- incorporated with BSNL and the evidence suggest that the tenure of work was from 1997 to August 2012 spreading over 14 years. Now, it is to be seen if the service of the claimant was terminated illegally and he was made a victim of unfair labour practice.

13. Naturally, the management has adopted unfair labour practice for taking the work from the workman without issuing any appointment letter, and other documents for years. Now, it has to be seen whether the workman services have been terminated illegally. Workman had alleged that his services have been terminated illegally when he had come to join after recovering from the accidental injuries.

14. **Section 25F of the Act** prescribe condition precedent to retrenchment of the workman. It is reproduced under:

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 the 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.

15. Admittedly, the respondent has not complied with the provisions of Section 25 F of the Act. These provision are mandatory in nature therefore, it is held that service of the workman is illegally terminated.

Relief

Naturally once it is held that the service of the workman is illegally terminated then reinstatement with full back wages would follow. But, keeping in view of the age of the workman i.e. around 50 years now, reinstatement is not an appropriate solution/relief. In lieu of the illegal termination of Rs. 5,00,000/- (Five Lac) compensation is an appropriate relief. Hence, management is directed to pay the compensation of Rs. 5,00,000/- within one month from the date of passing this award. Award is passed accordingly.

ATUL KUMAR GARG

Presiding Officer.

CGIT-cum- Labour Court-II

