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

I.D. No. 152/2018

Sh. Randhir Mishra vs. M/s. Medsave Health Insurance TPA Ltd.

Sh. Randhir Mishra, S/o Sh. J.M. Mishra,
Through- Delhi Plumber Allied Industrial Worker Union,
Address:- 118/2, Govind Puri, Near Nathu Sweet, Okhla Industrial Area Phase-II, New Delhi-110019.

…Workman/Applicant/Claimant

Versus

M/s. Medsave Health Insurance TPA Ltd.
(M/s. Medsave Healthcare TPA Ltd.).
Address-F-701-A, Lado Sarai, Mehrauli,
New Delhi-110030.

…Management/respondent

Counsels:
For Applicant/ Claimant*:*
None.

For Management/ Respondent*:*
Sh. Manoj Kumar, Ld. AR.

Award
30.03.2026

The present application has been filed **under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').** The claimant submits that he had been working with the management as an Electrician since 05.09.2008 and his last drawn salary was rupees 12,798/- per month. It is alleged that the management has been operating under different names, though the nature of work and workforce remain the same. The service record of the claimant was clean and unblemished, and no complaint was ever made against him. At the time of appointment, his signatures were obtained on blank papers, vouchers, and appointment letters, copies of which were never supplied to him. It is further alleged that he was deprived of statutory

facilities such as attendance card, leave book, overtime wages, weekly and festival holidays, annual increments, and timely payment of wages. When the claimant demanded these, the managements became annoyed and withheld his earned wages for the period from 01.03.2017 to 30.03.2017 and illegally terminated his services on 31.03.2017 in violation of Section 25F of the Act, without issuing notice, or following due procedure, despite the fact that he had worked for more than 240 days in each year. Thereafter, the claimant approached the Labour Department and raised an industrial dispute before the Conciliation Officer, but due to non-cooperation of the management, the conciliation proceedings failed and a failure certificate under section 2A of the Act was issued by the appropriate government. The claimant asserts that he has remained unemployed since the date of termination despite best efforts and has no source of livelihood. He, therefore, prays that the termination be declared illegal and unjustified, and that he be reinstated in service with continuity and full back wages along with interest @ 18% per annum.

In response, the management filed its written statement opposing the claim of the workman. The management raised preliminary objections that the present claim petition is false, frivolous, and devoid of any cause of action, as it has been filed with the intention to harass the management and extract money by misusing the provisions of labour laws. It is stated that no industrial dispute exists as the claimant is not a "workman" within the meaning of the Act, and therefore, the claim is liable to be dismissed. It is further alleged that the claimant has not approached the Court with clean hands and has concealed material facts, he is a habitual litigant who has filed similar claims against other establishments despite being in continuous employment. The management also submits that it reserves its right to file an amended/additional written statement upon receipt of supporting documents.

On merits, the management denies that the claimant was in service since 05.09.2008, stating instead that he was employed as an Electrician w.e.f. 01.04.2013 with last drawn wages of ₹11,500/- per month plus HRA of ₹1,298/-. It is denied that the management was operating under two different entities, clarifying that the company, presently known as Medsave Health Insurance TPA Limited, was earlier known as Medsave Healthcare TPA Limited and the name change was duly approved by the competent authorities. The management further

denies that the claimant had a clean service record, alleging that he was irregular, negligent, and frequently absent without prior permission, for which he was repeatedly warned. It is also denied that any signatures were obtained on blank papers or that statutory facilities were not provided; rather, it is asserted that the management, being a professionally managed public limited company, complied with all applicable labour laws.

The management specifically denies termination of services and asserts that the claimant voluntarily resigned vide letter dated 31.03.2017 on account of securing better employment and requested to release him immediately to join the new job on 01.04.2017, which was accordingly granted. It is stated that full and final settlement was prepared but the claimant failed to collect the same. The allegations of illegal termination and violation of Section 25F of the Industrial Disputes Act, 1947 are denied. It is further contended that the management duly participated in conciliation proceedings and attempted settlement, but the claimant avoided accepting dues. The management disputes the claim of unemployment, asserting that the claimant is gainfully employed elsewhere, and further submits that the position vacated by him has already been filled, leaving no vacancy. Accordingly, it is contended that the claimant is not entitled to any relief, and the claim petition deserves to be dismissed.

A rejoinder had also been filed by the claimant, where he denied the averments made by the management in its W.S. and reaffirmed the averments of his claim statement. However, he admitted to have resigned on 31.03.2017, though he asserted that the same had been obtained from him under threat to kill him. He further stated that on 15.04.2017, he addressed a letter to the management seeking withdrawal of his resignation. He also admitted that he had worked with **M/s. Delhi Darbar Gastronomy Pvt. Ltd.** during the period of his employment with the management, but clarified that the said job was on a part-time basis from 06:30 PM to 10:00 PM, whereas he worked with the management from 10:00 AM to 06:00 PM.

From pleadings of the party, following issues were framed vide order dated 20.05.2019.

1. Whether the proceeding is maintainable.

2. Whether the services of the workman were terminated illegally in violation of the provisions of the ID Act by the management.
3. If the workman is entitled to reinstatement to service with back wages and interest on the back wages.
4. To what other relief the workman is entitled to.

In order to substantiate his claim, the claimant examined himself and reiterated the facts as stated in his claim statement as well as in the rejoinder. He relied upon seven documents, the seventh document is a marked document (Mark-1)'. The documents relied upon by the claimant are as follows:

1. Demand letter dated 15.04.2017 sent to the management. (WW1/1)
2. Speed post receipt. (WW1/2)
3. A letter written to the management dated 15.04.2017 seeking withdrawal of his resignation letter. (WW1/3)
4. A copy of identity card. (WW1/4)
5. A copy of letter written by the management (dated 22.01.2024) verifying the claimant's employment in their office. (WW1/5)
6. A copy of appointment letter. (WW1/6)
7. A copy of letter written by the management (dated 14.12.2011) verifying the claimant's employment in their office. (Mark-1).

The witness was put to the test of cross-examination, wherein he admitted that the resignation letter was written by him in his own handwriting, and bore his signature dated 31.03.2017 at point X on document Ex. WW1/M1. He further admitted that Ex. WW1/M2, contained his signature at point A which is a clearance form dated 31.03.2017. He also admitted that Ex. WW1/M3 was his appointment letter dated 02.04.2013, consisting of three pages and was signed by him at point B, C and D. He further admitted that his email address was randhirmishra01@gmail.com. However, he denied that any memo dated 06.05.2016 was sent to him on the email. He further admitted that he

had been providing services at a company named **Delhi Darbar Gastronomy Pvt. Ltd.** having its office at 84, Archini, Delhi-110030 as an electrician. Though he could not recall the exact duration of employment with the company, he stated that it was for about 5-6 months. He further admitted that two demand letters dated 09.09.2016 (Ex. WW1/M5 and WW1/M6) against **Delhi Darbar Gastronomy Pvt. Ltd.** had been filed by him before the Deputy Labour Commissioner, Delhi, wherein he asked for minimum wages and arrears of salary. He, however, denied that he had been gainfully employed elsewhere or was providing services to private persons.

In rebuttal, the management firstly filed the affidavit of Sh. Bharat Bhushan Sharma, however, the said witness was substituted by Sh. Trivendra Kumar Sharma. The witness was called for cross-examination, but the Ld. AR for the claimant failed to cross-examine the witness despite several opportunities and repeated calls by the office of this Tribunal. Consequently, his right of cross-examination was closed, and the matter was fixed for final arguments.

Thereafter, upon a request made on behalf of the claimant, the opportunity to cross-examine the management's witness was reopened, subject to payment of a cost of Rs. 2,000/-. However, the cost was not paid, and due to continued non-appearance of the claimant, the right to cross-examine the witness was closed again. The testimony of the management's witness remained unchallenged and unrebutted, and shall be read in the evidence.

The Ld. AR for the claimant failed to appear, to cross-examine the management's witness despite repeated communications from the office of this Tribunal, and also failed to advance final arguments. Therefore, this Tribunal was left with no option but to decide the matter in the absence of arguments on behalf of the claimant.

The Ld. AR for the management contended that the present claim is not maintainable, as the claimant has not approached the Tribunal with clean hands and has suppressed material facts. It is submitted that the claimant did not disclose in his claim statement that he had voluntarily resigned from service, and sought to improve his case in the

rejoinder by alleging that the resignation was obtained under duress and threat to his life. It is further contended that the falsity of the claimant's case is evident from his own admission that he was working with another company during the period of his employment with the management. In this regard, reliance is placed upon two demand letters addressed by the claimant to **Delhi Darbar Gastronomy Pvt. Ltd.**, wherein he stated that he had been working with the said company w.e.f. 01.09.2015 as an electrician at a last drawn salary of Rs. 4,000/- per month and claimed unpaid wages of Rs. 12,000/-. In the second letter, he alleged non-payment of minimum wages and claimed arrears amounting to Rs. 43,392/- for the period from November 2015 to April 2016.

Upon careful consideration of the pleadings and evidence on record, the issue for determination is whether the claim petition is maintainable. The claimant has asserted before this Tribunal that his services were illegally terminated by the management on 31.03.2017 and that his wages for the month of March 2017 were withheld. It is his case that such termination is in violation of Section 25F of the Industrial Disputes Act, as neither any notice was served upon him nor was retrenchment compensation paid, as mandated under the said provision.

The claimant's case is that his service was terminated by the management without assignning any reason or giving any prior notice, in violation of Section 25F of the Act. Section 2(oo) defines the term 'retrenchment', while Section 25F of the Act sets out the conditions to be complied with by an employer before retrenching a workman. The definitions of which 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.

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 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

From the perusal of the above sections, it is clear that in industrial law, there is no absolute protection against retrenchment under the Industrial Disputes Act, 1947. An employee can be retrenched by an employer if certain conditions are fulfilled. The first exception has been provided within the definition itself, namely when a workman is terminated by way of disciplinary action. Other exceptions include voluntary retirement, superannuation as per contract, non-renewal or termination of a contract on its expiry, and termination due to continued ill-health.

The management has taken the plea that the claimant was in fact not retrenched, and he voluntarily tendered his resignation on 30.03.2017 and his resignation was accepted on same date on his request because he wanted to join another company and he had been

paid full and final amount in lieu of his salary, arrears and gratuity on 31.03.2017 itself.

In this regard, it is important to mention here that the claimant suppressed the material facts from this Tribunal. Firstly, he didn't disclose that he had resigned from the services of the management on 31.03.2017. Even when he tried to improve his case, he failed to place on record any postal receipt of the letter allegedly sent to the management seeking withdrawal of his resignation, meaning thereby that the said letter was never actually sent.

Further, he admitted the fact that he had signed the clearance form dated 31.03.2017 (Ex. WW1/M2). He even failed to disclose in his claim statement that he had been working with **Delhi Darbar Gastronomy Pvt. Ltd.,** from 06:30 PM to 10:00 PM during the period of his employment with the management, and admitted this fact only later in his rejoinder. The plea of part-time employment is also falsified because he had claimed minimum wages by sending a demand letter before the conciliation officer against **Delhi Darbar Gastronomy Pvt. Ltd.** (Ex. WW1/M6).

All these circumstances clearly indicate that the claimant is guilty of suppressing the material facts. Moreover, even if the case of the claimant is assumed to be correct, it still falls within the sub-clause (a) of section 2(oo) of the Act, as the claimant had voluntarily resigned from services.

In view of the above discussion in hand, the present proceedings are held to be not maintainable, and the claimant is not entitled to any relief, much less reinstatement with full back wages. Accordingly, the claim of the claimant stands dismissed. A copy of this award be sent to the appropriate government for notification under section 17 of the Act. The case file is consigned to record room.

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

Dated 30.03.2026