

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

I.D. No. 57/2020

Smt. Pinki, W/o Sh. Anil Kumar,
Through – Delhi Karamchari Sangh,
W-4, Infront of Kalkaji Bus Depot,
Govindpuri, New Delhi-110019.

Versus

1. ICICI Bank Ltd.

S-26, 27, 28, Greenpark Extensions,
Vera Tower, New Delhi-110016.

2. Care Facilities Management Services Pvt. Ltd.

KHIL House, 2nd Floor, 70/C, Nehru Road,
Nest to the Orchid Hotel, Vile Parle (East),
Mumbai-400009

AWARD

This is the claim U/s 2A of the Industrial Disputes Act 1947 (herein after referred as an Act) filed by the workwoman after approaching the conciliation officer where efforts for conciliation have been failed. Workman in her claim statement has stated that she was appointed by the management-2 on the post of House Keeping on 17.10.2016 and her last drawn wages was Rs. 14516/- Per month. Management-2 did not issue any appointment letter to the workman. M-2 had deputed to workman in the management-1. She used to work sincerely, honestly. Her service record was clean. M-2 used to take work twelve hours per

day from her, but the management did not pay any overtime wages. Management-1 did not issue any appointment letter, leave book, causal leave, pay slip, HRA etc. She used to demand to the same from the management-1 and 2 to provide the above said facilities, but the management inspite of giving assurance did not pay any heed to her demand. On 25.01.2019 the management-2 had illegally terminated the workwoman from her services on the direction of management-1, without any rhyme or reason. Hence, he filed the present complaint.

Notice of this claim petition had been issued. Management-1 had not turned up. He was proceeded ex-parte vide order dated 4.05.2022. Management-2 filed the reply/written statement to the claim petition.

Management-2 has taken various preliminary objection stating that the claim of the claimant is ill-conceived, misconceived and untenable and is liable to be dismissed. Claim has been filed in order to extort money, however, he has admitted that claimant is the employee, but stated that the claimant did not adhere discipline and it has received various complaint of the workwoman. For this claimant was granted several opportunities to improve, but every time instead of mending her ways, she misused her position and committed further acts of misconduct. On 24.01.2019, claimant was advised to report at Jhandewalan Branch of ICICI Bank, but she failed to do so. She was sent whatsapp messages dated 27.01.2019, 30.01.2019 and 01.02.2019, but despite the same she neither reported for work, nor reply to the said messages. She remained absent unauthorisedly from duty from 25.01.2019. It is submitted that in as much as there is not termination of service because the claimant is having remained absent from duties w.e.f. 25.01.2019 left the job of her own.

After completion of the pleadings following issues have been framed vide order dated 03.08.2022 which are given below:-

1. Whether the proceedings is maintainable.
2. Whether there exist any employer and employee relationship between the management-1 and the claimant.
3. Whether the service of the claimant was terminated illegally or for the misconduct shows by the claimant.
4. To what other relief the claimant is entitled to.

In order to prove her claim, workwoman had examined herself as WW1.

In her affidavit of evidence, she had reiterated the averment made in the claim petition stating that she was appointed by the M-2 at the post of House Keeping on 17.10.2016 at the last drawn wages was Rs. 14,516/- per month. She was illegally terminated on 25.01.2019. She had relied upon seven documents i.e. Copy of complaint to ALC, copy of demand notice dated 26.02.2019, copy of complaint to RLC, copy of rejoinder, copy of pay slip, original failure report dated 30.12.2019, copy of I-card. Workwoman had not been cross-examined.

In order to prove his case, the claimant firstly had to prove that he is a workman, he worked in an industry, an industrial dispute arises and he was terminated for this reason. For this, section 2(S), 2 (J & K) and section 2 (OO) are required to be reproduced.

Section 2 (s) of the Industrial Disputes Act define the workman, it reads as under:

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,

whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties, attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]*

Section 2 (j, k& oo) of the I.D Act define the industry and industrial disputes respectively. It reads as under:

[(j)] “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

(k) “industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(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;

Now, come to the case in hand, claimant has claimed to have been working with Respondent-1 through respondent-2, the contractor **Care Facilities Management Services Pvt. Ltd** as House Keeping. She had led the evidence also to that effect that she had been working with the respondent-1 as House Keeping through respondent-2. In the evidence, she did not seek any relief against respondent-1. Her case is that her services have been terminated by respondent-2 from 25.01.2019. The above testimony of the workwoman remained unchallenged, unrebutted and uncontroverted, because the management-2 has not come for cross-examining the witness.

She had proved from the above said testimony that she is a workwoman and she worked with **Care Facilities Management Services Pvt. Ltd.** who used to offer services to the government institution, therefore, the respondent-2 is an industry. Her further contention is that her services has been terminated without any rhyme and reason, therefore, industrial disputes has been arisen.

Facts culled from the evidence, which the workwoman has led is that her services has been terminated. Respondent-2 who had appeared and filed the reply and taken the defence that workwoman remained absent from 25.01.2019 and he had given whatsapp messages to the workwoman dated 27.01.2019, 30.01.2019 and 01.02.2019 for joining the duty, but, she had not come. However, neither the management had cross-examined workwoman to this aspect nor led any evidence contrary to this effect.

From the above discussion, workwoman has proved that she had worked as workman with respondent-2 and her services have been terminated illegally as no notice pay or retrenchment compensation has either been offered or given. Not only she had proved that his petition is maintainable but also she had proved that her services have been terminated illegally, therefore, issued no.-1, 2 & 3 has been answered accordingly.

ISSUE No. 4: What relief, the claimant is entitled and be given.

Workwoman claims that she be given reinstatement of service with full back wages with respondent-2 since the date of his termination, she is jobless. She has been undergoing with financial crisis. The testimony of this witness is unchallenged as the management-1 had not cross-examined him that she has been doing job, therefore, there is no doubt left in the mind of the court/tribunal that the workman has got any job.

Admittedly, workman had worked for more than three years with management-2. Normally, when services of the workman were terminated, naturally, reinstatement with full back wages would follow. However, in recent past, there has been a shift in the legal position and long line of cases decided by the constitutional court that relief of reinstatement with full back wages is not automatic and maybe fully inappropriate where the workman worked only for a year or two. However, it depends upon case to case where the relief of reinstatement has to be given.

Here in the present case, workwoman at the time of filing the evidence was almost 44 years old, she had not given the list of any family member dependent upon him. So, this tribunal is not inclined to give the relief of reinstatement. It would be better if the lump sum amount is given to the workman in lieu of reinstatement. In these circumstances, amount of Rs. 2,00,000/- (Rupees Two Lakhs only) is an appropriate relief in lieu of his illegal termination. Respondent-2 is directed to pay

the amount of Rs. 2,00,000/- (Rupees Two Lakhs only) to the workwoman. Award is accordingly passed. Copy of this award is sent to the appropriate government for notification as required U/s 17 of the I.D. Act. This file is consigned to record room.

Date 20, June, 2024

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