

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

I.D. No. 114/2021

Sh. Omprakash vs. A.I.I.M.S.

Sh. Om Prakash, S/o Late Sh. Bihari Lal,
R/o Village Sharanwas, Ward No.-06,
District & Tehsil Rewari, Haryana-123401.

...Applicant/Claimant

Versus

Dr. D.K. Sharma, Medical Superintendent,
All India Institute of Medical Science (A.I.I.M.S.),
Ansari Nagar, New Delhi-110029.

...Management/respondent

Counsels:

For Applicant/ Claimant:

Sh. B.K. Sharma, Ld. AR.

For Management/ Respondent:

Sh. Kautilya, Ld. AR.

Award

06.11.2025

1. In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India, through the Ministry of Labour and Employment, vide its Order No. F. No. ND. 96 (20)/ID (2A) 2021-DY. CLC dated 27.05.2021, has been pleased to refer the following dispute between and for adjudication by this Tribunal in the following terms:

“Whether the action of the management of AIIMS to terminate the services of Shri Om Prakash illegally without any reasonable grounds is correct, if not what other relief he is entitled to?”

2. The facts disclosed in the claim statement reveal that this is a second round of litigation, the first having been filed before the State Labour Court, where in despite the management raising an objection regarding lack of jurisdiction, the claimant did not withdraw the claim and proceeded with the matter. The claim was ultimately dismissed vide order dated 27.03.2014. The claimant then preferred a writ petition before the Hon’ble High Court, W.P.(C) No. 996/2015, challenging the said award. The High Court dismissed the petition, holding that the claim suffered from delay and laches, it was not a case of retrenchment but of non-renewal of a contract upon expiry and since the workman had not completed 240 days in the year prior to his termination, and he was not entitled to retrenchment compensation. The Court, therefore, rejected his claim for reinstatement with full back wages. Thereafter, the claimant preferred a Special Leave Petition before the Hon’ble Supreme Court which was dismissed *in limine*.

3. Subsequently, the claimant approached the Central Labour Commissioner for conciliation, stating that he had earlier chosen the wrong forum lacking jurisdiction. In his fresh claim statement, he asserted that he was appointed with effect from 01.07.1990 as a “Nursing Orderly” through the employment exchange (Reg. No. RMR-2767/90, R.K. Puram) and worked as a Ward Attendant for five years, up to 31.03.1995, with commercial breaks. The periods of his alleged engagement are as under:

Sl. No.	Date of Engagement	Date of Disengagement	Total Days Worked
1	01-07-1990	30-09-1990	92
2	04-10-1990	31-12-1990	89
3	01-01-1991	31-03-1991	45
4	04-04-1991	30-06-1991	88
5	01-08-1991	30-09-1991	61
6	11-01-1992	30-03-1992	80
7	10-04-1992	31-07-1992	113
8	01-10-1992	31-12-1992	92
9	01-10-1993	31-12-1993	92
10	01-01-1995	31-03-1995	90
Total			885

4. The claimant states that he was disengaged as a casual labourer on 31.03.1995. According to him, thousands of daily wage employees recruited during that period were regularised by AIIMS after being granted temporary status (Ref. Memo dated 28.07.1999), but he was excluded despite being similarly placed. He narrates having made numerous representations since 10.10.1995 to the management, the Ministry of Health and Family Welfare, the Regional Commissioner, the SC/ST Commission, MLA, speaker etc. He relies particularly on the Ministry of Health and Family Welfare's recommendation dated 02.03.2000 (F. No. 06/Health-P/99-SSW-II) for his re-appointment, which AIIMS declined on the ground that he had already served for five years and had become overage for absorption. Therefore, the claimant seeks directions to the management for payment of back wages from the date of alleged illegal termination till the date of retirement, with interest.

5. The claimant also assailed the award dated 27.03.2014 passed by the labour court, opposing that it failed to consider his total service of 880 days between 01.07.1990 and 30.03.1995 as evidenced by certificates issued by the respondent, that his termination was effected without notice and was thus arbitrary and unlawful, that he was deliberately not informed about the 1997 interview, that his candidature was wrongly rejected in 1999 on the ground of overage, and that his case warranted sympathetic consideration, being from a weaker section and having family responsibilities.

6. In response, the management submitted its written statement asserting that the claimant, Sh. Om Prakash, was employed as a hospital attendant on a daily wage basis in the Main Hospital during intermittent spells between 01.07.1990 and 31.03.1995, performing in total 880 days of service over several intermittent periods. It is submitted that in no calendar year to the last engagement the claimant had served 240 days of continuous service as explained in Section 25(B)(2) of the Industrial Disputes Act, 1947, and during the twelve months immediately before 31.03.1995, he had actually worked only 90 days. The management stated that no break in his service by reason of any situation in Section 25(B)(1) like illness, sanctioned leave, accident, judicial strike or lock-out not traceable to the workman. On this premise, the management opposes that the statutory requirement of continuous service is not met, and therefore, no right to regularization or re-employment arises in favour of the claimant.

7. It is also asserted that in August 1995 the Institute made a policy decision that no new individuals would be employed on daily wages and only those persons who were already in service on the cut-off date would be kept. Any further engagement would be done from among individuals who had worked earlier in the Institute. This policy was also maintained by the Hon'ble High Court of Delhi on 02.02.1999, because the claimant was not in contract on the date of cut-off, he had no benefit under it. The contention made by the claimant that the act of the management was discriminatory and against Articles 14 and 16 of the Constitution are met with denial, the management arguing that the record itself shows that the service of the claimant was intermittent, and that even assuming the collective days worked as pleaded, the failure to complete 240 continuous days of continuous service in any single year renders him ineligible for the relief sought.

8. The management contradicts the claim that juniors to the claimant were hired or recommended for employment while the claimant himself was denied. It is asserted that no documentary evidence has been provided to support that the individuals mentioned such as Sh. Giri Raj, Sh. Dai Chand, Sh. Bhupender, and Sh. MukutBihari were in a similar position. Even if suggestions had been given by the Medical Superintendent or by the Ministry of Health & Family Welfare, the same would not prevail over the statutory eligibility criteria or the recruitment rules framing engagement.

9. In connection with the later recruitment exercise in July 1997, it is alleged that some daily wage posts fell vacant in the Sanitation Department against leave vacancies, applications were sought, and the claimant applied. On closer examination, however, he was proven to be two and a half years overage even after taking advantage of the admissible age relaxation of five years granted in favour of Scheduled Caste candidates. Being born on 10.03.1962, his candidature was not accepted as per the recruitment rules prevailing at the time. This, in the view of the management, was a case of scrupulous compliance with terms of eligibility and had no chance of arbitrariness.

10. Another pre-preliminary objection taken by the management is that the current proceedings stand barred by the doctrine of res judicata under Section 11 of the Code of Civil Procedure, 1908. The same cause of action and questions, it is submitted, have been directly

and substantially in question between the parties in previous proceedings before the proper forums and have been determined against the claimant. In the initial round of litigation, W.P.(C) No. 40/2002 filed with the Hon'ble High Court of Delhi against his rejection for re-engagement on the basis of being overage was rejected on 07.01.2005. Subsequently, ID No. 542/2010 with the Labour Court, Karkardooma, was rejected on 27.03.2014, declaring that the workman is not eligible for any relief. The claimant then approached the Hon'ble High Court again in W.P.(C) No. 996/2015 seeking reinstatement, which too was dismissed on 22.04.2015. The management asserts that these decisions attained finality and conclusively adjudicated the matter, and that the present proceedings are nothing but an attempt to re-litigate an issue already settled on merits.

11. It is argued that the rule of *res judicata* is in pursuit of imparting finality to judgments and has the effect to preclude a second suit or action where the matter directly and substantially in controversy has already been adjudicated between the same parties, or those under whom they claim, by a court capable of trying the subsequent case. As the prior judgments already established the claimant's right and qualification, the same cannot be reopened.

12. Effectively, the management asserts that the claimant's employment was never continuous under the statutory requirement; that he was not in service on the cut-off date for the 1995 policy nor was he eligible in the 1997 recruitment exercise on account of overage; that discriminatory or selective regularisation allegations lack foundation; and that consecutive rejection by the courts of his claims illustrates that the current dispute lacks merit and is barred in law. On these grounds, the management prayed for dismissal of the claim.

13. It is also important to mention here that, as per the record from the Labour Commissioner, Assistant Labour Commissioner, Ms. Sakshi Chugh, while dealing with the claim of the claimant, has opined that further reference for adjudication in the present dispute is against the principle of *res judicata*, as enunciated by the Hon'ble Supreme Court in the matter of ***Chairman and Managing Director, The Fertilizers and Chemicals Travancore Ltd. & Anr. vs. General Secretary FACT Employees Association & Ors.*** (Civil Appeal No. 3803/2019), considering the fact that matter has attained finality after the dismissal of the SLP preferred by the claimant against the order of the Hon'ble

High Court of Delhi. However, despite this, the matter has been referred to this Tribunal for fresh adjudication on the ground that the Central Government is the appropriate authority.

14. Considering the fact that the same matter between the same parties has already attained finality, the principle of *res judicata* is applicable in the present case. Moreover, it would be a waste of time for this Tribunal to allow the matter to be contested again, because of the fact that matter has already been adjudicated before the competent Labour Courts of the Government of Delhi, where this matter was filed earlier. It was the management that raised the objection regarding lack of jurisdiction. However, instead of withdrawing the claim, the claimant preferred to continue the proceedings before the appropriate Court/Tribunal. Therefore, he has assumed the jurisdiction of that Court. Moreover, if the petition is allowed to continue, the evidence would be the same which had been led before the earlier Courts/Tribunal. Entertaining the same dispute again would amount to waste of the valuable time of this Tribunal.

15. In view of the above discussion, claim is not maintainable as it is barred by the principles of *res judicata*. Hence, claim stands dismissed. Award is passed accordingly. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. File is consigned to record room.

ATUL KUMAR GARG
(Presiding Officer)