Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 228/1999

Date of Passing Award- 24th February,2023.

Between:

Shri Vinod Kumar, Workman
S/o Shri Kali Ram,
Resident of House No. 51403/31,
Kamla Nagar, Rohtak (Haryana) 124001

Versus

1. M/s. Life Insurance Corporation of India, Ltd.
   11th Floor, Tower-2, Jeevan Bharati Building,
   Cannaught Circus, New Delhi-11000
   Through its Zonal Manager, Northern Zones

2. The President, Consortium of Tenants
   of Jeevan Bharti Building,124, First Floor,
   Cannaught Circus, New Delhi- 110001

. Managements

Appearances:-

Claimant in person	For the Workman
Sh. Rajiv Katyain (A/R)	For the Mgt. no.1 i.e. LIC
Sh. B.K Chabbra, (A/R)	For the Mgt. no.2 i.e Consortium of Tenants

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the

management of Life Insurance Corporation of India, Ltd,(ii) The President, Consortium of Tenants and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-17012/35/99/IR(B-II) dated 18/11/1999 to this tribunal for adjudication to the following effect';

> "Whether the demand of Sh. Vinod Kumar engaged through consortium of tenants of Jeevan Bharti Building in the office of their estate manager on daily wages as peon for the period from 22.09.1995 to 29.12.1998 for his employment and regularization in service with Life Insurance Corporation of India, Northern Zonal Office, Jeevan Bharti, P.B. No. 630, Connaught Circus, New Delhi being principal employer is justified, valid and legal? If yes, then what benefits and relief he is entitled to?"

As narrated in the claim petition, the claimant Vinod Kumar was appointed as a peon in the office of the managements, on 22.09.1999, and paid the wage in the rate of basic wage notified by the Govt of Delhi. He continued to work till 29/12/1998, when on reporting for work, he was verbally informed about termination of his service. The said termination was illegal as the claimant had worked continuously for the managements and had completed 240 days of work in the preceding calendar year of termination. The employer while terminating his service, had not followed the provisions of The I D Act as no notice of termination, notice pay or termination compensation was paid. The persons junior to him are still working. The employer had not published the seniority list nor had followed the principle of last come first go. The employer had even withheld his two months pay at the time of termination. It has also been stated in the claim petition that the management No. 1 i.e LIC owns the Jeevan Deep Building situated at Connaught circus New Delhi. The building has been let out to different tenants who have formed a consortium of Tenants to manage the maintenance and security of the building. For the purpose several persons are appointed to execute different nature of work. The claimant was appointed as a peon in the year 1995, against a regular post after

due approval of the president of the consortium of tenants and getting his salary from the management credited to his Bank account. In the year 1997, the management took a decision in the meeting of the Governing Body to place the service of the claimant under the security contractor engaged, the claimant did not agree to the same and insisted to continue working as a direct employee of the management as he had understood that the benefits he was getting as a direct employee would not be same if employed under the contractor. On his protest he was given salary directly by the management which continue to be credited to his Bank account. On 9.12.1998, when he reported for work, suddenly, he was informed verbally about termination of his service w.e.f. that date. The provisions of sec 25F, 25G & 25H were not followed at the time of termination. Finding no other way, he made representations to the management, which were not considered. At last, he approached the Labour commissioner with his grievance. Though a conciliation proceeding was held, it yield no result and the appropriate Govt. referred the matter for adjudication in terms of the Reference. Being noticed both the respondents appeared and filed written statement separately supporting their respective stand.

The Respondent No 1, L I C, has stated that the claim is frivolous in as much as the claim against L I C is concerned. The building is owned by L I C. But it has been let out to different tenants and only a portion of the same is under their occupation. The maintenance and guarding of the building was initially entrusted to a contractor and subsequently, the same was discontinued. Subsequent there to a consortium of tenants was formed, which is a society, duly registered under the Society Registration Act. The elected office bearers of the society look after the maintenance of the building. L I C is in occupation of two floors of the building only and it has no relationship with the claimant as the principal employer as claimed by him. L I C has no knowledge if at all the claimant was appointed in the consortium as a peon. Thereby the management No 1 has disowned the liability for the claim advanced by the claimant.

The management no 2 i.e. the consortium in the other hand has challenged the maintainability of the proceeding on the ground that the consortium is a registered society under the Society Registration Act of Govt. of NCT Delhi.

Hence the Central Govt. Industrial Tribunal lacks the jurisdiction of adjudicating the matter. Moreover, the conciliation proceeding has been held behind it's back and no notice of conciliation was ever served. In addition to this it has also been pleaded that the claimant was appointed as a peon on daily wage basis for a temporary period and was being paid wage as per the Govt notification for the period of employment. It is false that the management no 2 had tried to pay the wage to the claimant through the contractor. The post or job was never of permanent nature as claimed by the claimant. The claimant not being under the permanent employment of the management no 2 there was no necessity of complying the provisions of ID Act. While denying all other facts as pleaded by the claimant, this management has stated that the management has cleared all the dues of the claimant when his engagement came to an end in December 1998. Hence the Management No 2has prayed for dismissal of the claim.

The claimant filed replication to both the written statements and confirming the stand taken in the claim statement. The following issues were framed on the basis of the pleadings of the parties.

ISSUES;

1-If the proceeding is maintainable?

2-If there exists any Industrial Dispute between the workman and Respondent No 1&2?3-If termination of the workman by R1 is legal and justified?

3-If R2 is liable to compensate the loss suffered by the work man?

4-If the workman is entitled to reinstatement?

5-To what relief the parties are entitled to?

Be it stated here that earlier this Tribunal had passed an award dt 09/01/2007, directing the R 2 to reinstate the claimant in service forth with.

But the award was challenged by the R2 before the Hon'ble High Court of Delhi, and the Hon'ble court passed an order setting aside the said award, subject to payment of cost. At the same time, gave liberty to R2 to file WS. Accordingly WS was filed and issues were framed. Though noticed , M1, L I C appeared. When called upon to adduce evidence, both the claimant and the R1 made submission to adopt the evidence already adduced by them during the hearing held before passing of the earlier order. R2 wanted to cross examine the claimant examined as WW1 and the other witness examined as WW2. R2 examined it's Asst Estate Manager as MW 1. His cross examination by claimant was marked Nil for the non response of the claimant.

On behalf of the R2 it was argued that the Tribunal lacks territorial jurisdiction to adjudicate the matter since R2 is a society registered under the Society Registration Act, Government of Delhi and as such this tribunal has no power to decide the dispute. He also objected about the non participation in the conciliation proceeding. On the other hand, the ld. A/R for the claimant argued that it is an old matter of 1999 and the claimant is running from pillar to post seeking justice. The award was passed notwithstanding the absence of R2. For the award being set aside the claimant is against trying to get relief.

Findings:

Issue no.1

The maintainability of the proceedings has been challenged on the ground that R2 is a society registered in NCT Delhi and as such the dispute should have been raised before the Industrial Tribunal of Delhi and the reference has been made wrongly to this Tribunal. The R2 has further pleaded that the conciliation was never held in it's presence and thus it cannot be held that an Industrial Dispute exist between the claimant and R2. In order to support his contention reliance has been placed in the case of **Vinod Sing Vadav vs. M/s.**

Securitans India Pvt. Ltd. decided by the Hon'ble High Court of Delhi. In the oral statement, the witness examined on behalf of R2 also stated that no notice was received for the conciliation proceeding and the entire conciliation was held behind its back and as such the proceeding not maintainable on the concocted facts pleaded by the claimant. The witness examined as MW1 has further stated that management no. 1 and 2 are distinct entities. Whereas the management no.1 has been constituted under a Central Act and under the control of the Central Government, the mgt. no. 2 is a Pvt. association registered under the Society Registration Act of the State Government.

The stand taken by the witness of R2 in the oral statement with regard to the jurisdiction is not acceptable since the claimant has alleged the cause of action against both R1 & R2 and, the appropriate Government reference rightly made with reference to the Central Government Industrial Tribunal.

Respondent no.2 has alleged that no notice was ever issued by the Labour Commissioner for participation in the conciliation proceeding. In reply the claimant as ww1 has stated that during the conciliation proceeding several notices were issued to R2. But R2 intentionally avoided to attend and for the said reason the conciliation failed. No evidence has been placed by R2 to believe that notice of conciliation was not issued to him. The respondent no. 2 could have called for the records from the office of the Labour Commissioner to justify his stand. The same having not been done this Tribunal is not inclined to accept that notice of the conciliation proceeding was not served on the Respondent no. 2. On further perusal of the record it is found that in the reference received from the appropriate government there was no reference about R2. But for the petition filed by the claimant on 08/03.2001 to add R2 as a party, the Tribunal allowed the same and R2 was added. But R2 being noticed though appeared did not file the w/s leading to passing of ex-parte award against him Thus, from the totality of the circumstances it appears that R2 is a necessary party and even if, had not participated in the conciliation, the said position shall not impact the claim of the claimant. The Issue is accordingly answered against R2.

Issue No. 2, 3 & 4

These three issues been interdependent have been taken up for consideration together. The admitted facts are that the claimant was appointed as a peon on 22.09.1995 in the Office of R2 on the basic minimum wage prescribed by the Government of Delhi Administration. It is also not disputed that he had worked till 29.12.1998. The claimant had asserted that he was working under LIC the principal employees in whose building the consortium of tenants was functioning. The said consortium was paying salary to him which was being credited to his Bank Account. But his service was illegally terminated on 29.12.1998.T The fact of employment and discontinuation of service with reference to the dates have been admitted by R2 in the Ws as well as in the oral statement adduced through MW1 who is none other than the assistant estate officer of R2. The claimant has filed document which are the office notes to prove that pursuant to a resolution of the General Body of R2 and with due approval of the Governing Body he was appointed as a peon. The R1 LIC of India had denied any kind of relationship with the claimant. The specific stand of R1 is that the Building though belongs to LIC, the same has been rented out to different tenants. There are 18 number of tenants occupying the building have formed a consortium which is a Society Registered under the Society Registration Act. The consortium responsible for the maintenance and security of the building. They appointed different categories of persons on whom the R1 has no control. The witness examined on behalf of R2 reiterated the stand taken in the w/s and his stand was not disputed by the claimant. Thus, it is held that no Industrial Dispute exists between the claimant and R1.

Since R2 has admitted the relationship of the claimant as it's employee, is now to be examined whether the termination of the service by R2 is legal and justified and if the claimant is entitled to be compensated by R2. The claimant has alleged that he was initially appointed by R2 and R2 was paying his salary. In the year 1997, R2 decided to engage a contractor for the security and

maintenance activities and also took a decision to place the service of the claimant under the contractor which was not acceptable to the claimant for non-availability of the similar facilities as he was availing as an employee of R2. By placing the resolution of the General Body and his present on record the claimant has stated that this decision of R2 was prejudicial to him and thus not acceptable. The claimant has further stated the protest was made his service brought to an end on 29.12.1998 when he reported for duty as a matter of routine, the officials orally informed about termination of his service. No letter of termination, notice of termination notice pay or termination compensation was paid to him. Not only that the juniors to the claimant were allowed to work where as he was denied. The provision of section 25 F 25 G and 25 H were not followed at the time of termination of his services. In the written statement and in the evidence, the R2 has denied the facts of termination and has explained that the claimant for his dissatisfaction to work under the contractor had voluntarily left the employment and this is not a case of termination. But surprisingly, not document has been placed on record by R2 to make this Tribunal believe that any notice was ever served on the claimant recalling him to join duty. The minutes of the Governing Body of the consortium proved as ww1/62, clearly proves that on 29.10.1998 the Governing Body took a decision that Vinod Kumar, the claimant, performing the duty of the peon, should form part of the security contract and accordingly his salary be paid by the security contractor. This leads to a conclusion that the service of the claimant who was working with the consortium since 1995 was terminated with effect from 29.12.1998. There being no evidence to the contrary, the evidence of the claimant that the provisions section 25 F and 25 G were contravened is accepted.

The law is well settled that when the workman successfully establishes his relation as an employee of the management is to be seen if the termination was made legally or illegally. Reference can be made to section 25 F of the Act of 1947, which precisely speaks that no work man employed in any Industry who has been in continuous service for not less than one year shall be retrenched

unless and until the said workman has been given one month notice in writing , or notice pay or retrenchment compensation . In this case, the R2 has not stated anything with regard to the allegation of the claimant about the non-compliance of the provision of section 25 F of the ID Act. The only plea taken by 2 is that the workman had voluntarily left the service. In absence of any notice of recall issued by R2 the only conclusion is that the claimant had not left the service voluntarily but his service was terminated and for non-compliance of the provision of section 25 F of the ID Act, the termination is illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what will be the relief that can be granted to thee workman once his termination is held illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that;

"Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801 the Hon''ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case, where the workman has prayed for a relief of reinstatement. His claim that he had worked for 240 days in the calendar year preceding to his termination has not been disputed by

the respondent no. 2. But it is a fact noticeable that he had worked from 1995 to 1998 and has not been in the service of the respondent no. 2 for about 24 years. It is not known whether the claimant has in the meantime attained the age of superannuation. In such a situation, it is not felt proper to order reinstatement in to service. The proper recourse is to compensate him for the loss suffered by him and the said compensation shall be payable by the respondent no. 2, who had illegally terminated his services without complying the provision of the ID Act.

In the case of Deepali Gundu Surwase vs. Kranit Junior Adhyapak Mahavidyalaya (2013) 10 SCC. 324 the Hon'ble Supreme Court have held;

"in case of wrongful termination of service reinstatement with continuity of service and back wages is the normal rule. While deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee-workman, the nature of misconduct if any, the financial condition of the employer and similar factors. Ordinarily an employee whose service is terminated and who is desirous of getting back wages is required to either plead or at least make statement before the adjudicating authority that he is not gainful employed. If the employers wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that employees-workman was gainfully employed and was getting wage equal to the wage he was drawing prior to the termination of service""

But here is a case, neither the employer nor the employee has pleaded about the gainful employment. It is also noticeable that the claimant had worked for four years only under R2. Considering all the circumstances it is felt that the R2 shall pay 15 days average pay for each completed year of continuous service to the claimant for non service of the notice and shall also pay Rs. 5 lakh towards compensation for the loss suffered by the claimant during the last 24 years which is inclusive of the litigation expenses incurred by

him. These three issues are accordingly answered in favour of the claimant.

Issue no. 5 and 6

In view of the finding arrived in respect of issue no 2, 3 and 4, it is held that the claimant is not entitled to the relief of reinstatement, but entitled to the monetary compensation as stated in the preceding paragraph to be by R2. These two issues are accordingly decided.

Hence Ordered

Reference be and the same is answered in favour of the claimant. It is held that the service of the claimant was illegally terminated by R2 with effect from 29.12.1998, in contravention of the provisions of section 25 F of the ID Act. R2 is hereby directed to pay equivalent of 15 days average pay for every completed year of continuation service as per the last salary drawn by the claimant along with a lump sum amount of Rs.5 lakh as compensation for the loss suffered by the claimant during the last 24 years for such illegal termination and amount shall include the litigation expenses incurred by the claimant R2 is further directed to pay this amount to the claimant within 30 days from the date publication of the award without interest, failing which shall carry interest at the rate of 6 percent per annum from the date of receipt of the reference from the appropriate Government and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
24th Feb, 2023

Presiding Officer.
CGIT-cum-Labour Court.
24th Feb, 2023