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

ID No. 185/2018

Sh. Vijay Vs. Kalindi College

Counsels:
For Applicant/ Claimant*:*
Sh. Vijay Pal, Ld. AR.

For Management/ Respondent*:*
None for the management.

Award

1. A very short question arises in the present claim filed by the claimant **U/s 2A of the Industrial Disputes Act, 1947**; whether the services of the workman was terminated due to the efflux of time.

2. Claimant in his claim petition asserted that he is a law abiding and peace loving citizen of India and he worked with the management at the post of SafaiKaramchari/M.T.S. since 18.10.2010 and management had issued the appointment letter bearing no. KC/PF/22753 as SafaiKaramchari at the basic salary of Rs. 7,500/- per month. He was not provided minimum wages, casual and yearly leave, wages on register etc. Management again executed an agreement for the period of six month only and thereafter renewal had been done from time to time. His last drawn salary was 15,070/- per month. On 31.03.2017, the management suddenly stated that there is no need for his service anymore and he was asked to deposit his clearance letter stating that he had taken all his dues as full and final. His service

had been terminated without giving any reason and was illegal. He was suffering from 80% disability. He had filed his claim before the **Deputy Chief Commissioner, Central District, Jeevan Deep Building, 4th Floor, SansadMarg, New Delhi**. No conciliation took place and the concerned officer had issued the failure report on 13.09.2018; hence, he filed the present claim with the prayer that he be reinstated with full back wages.

3. Written statement had been filed by the respondent where he admitted that the claimant was appointed vide letter no. KC/PF/22753 dated 18.10.2010 on a consolidated remuneration of Rs. 7,500/- per month. He had also admitted that contract of the claimant was renewed by the respondent from time to time, till around January 2016. Contractual appointment of the claimant including the rules relating leaves, remuneration etc. was governed by the University of Delhi and UGC rules and regulations. He had taken the plea that behavior of the claimant started deteriorating day by day and he started to become negligent towards his duties. Staff members of the college requested the claimant to be more careful in his work but the claimant paid no heed to the said requests. Even the behavior of the claimant became worse that led to a level where the claimant would just come to the college and used to spend entire day idly without doing any work. A warning letter was issued to the claimant dated 26.11.2016 against acknowledgement and the claimant was given the final opportunity to mend his ways. On 27.12.2016, a general notice was issued by the respondent college, wherein it was specifically informed to all the contractual staff that their renewal would depend only on the basis of satisfactory performance. The tenure of claimant was again extended for a period of one

month from 01.03.2027 to 31.03.2017. As such, the respondent submits that contract had been expired with an efflux of time.

4. Rejoinder had been filed by the claimant where he denied the averment made by the respondent in his written statement and affirmed the averment made by him in the claim statement.

5. After completion of the pleadings vide order dated 12.03.2019, following issues had been framed:

1. If the proceeding is maintainable and the claimant is a 'workman' under the definition of Law.
2. Whether the termination of service of the workman by the respondent is illegal and amounts to unfair labour practice.
3. To what relief the workman is entitled to.

6. In support of his claim, workman had examined himself and he had filed the affidavit affirming the averment made in the claim statement. He has relied upon five documents i.e. termination order (Ex. WW1/1), appointment letter (Ex. WW1/2), copy of the attendance sheet issued by the management (Ex. WW1/3), copy of the identity card issued by the management (Ex. WW1/4), copy of the disability certificate (Ex. WW1/5). Witness was cross-examined at length; however, nothing substantial had been extracted from the mouth of the witness. His testimony almost has gone unchallenged, unrebutted and uncontroverted to the fact that he was appointed and was terminated on such dates respectively.

7. Nothing has been brought by the management to contest his plea regarding claimant's behavior. Management has not led any evidence despite providing a number of opportunities;

even a cost of Rs. 2000/- was imposed but thereafter management stopped appearing in this tribunal.

8. AR for claimant Sh. Vijay Pal has forcedly argued that the continuity of the contract for almost seven years isa sham and bogus arrangement. Workman has completed the 240 days in a year admittedly. The management has not followed the provision of **25F of Industrial Dispute act**therefore his termination be declared as illegal and he be reinstated with full back wages. He has relied upon the judgment **Devinder Singh vs. Municipal Council,Sanaur** passed by Hon'ble Supreme Court of India on 11th April, 2011 whereby the court had held in the similar circumstances termination of the workman is illegal.

9. I have heard the claimant and gone through the record and evidence thereof and my findings are as follows. Admittedly, the claimant is aworkman. **Issue no. 1 and 2**are related to each other. Unless the claimant proves that he is a workman, no proceeding can be launched under Industrial Dispute act, 1947. Before parting the decision in the above said case, section 2 (oo), 2 (s) and 25F of the actis required to be reproduced herein:

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

> ***2 [(s) "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 3 [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 [(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 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].

10. Section 2(s) contains an exhaustive definition of the term ‘workman’. It takes within its ambit any person including an apprentice employed in any industry to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person who has been dismissed, discharged or retrenched in connection with an Industrial Dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. Certain exclusions are also given in the definition itself. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service. The quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of section 2(s) of the act.

11. 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.

12. Once the employer challenge the dispute on the ground that an employee is not a workman within the meaning of section 2(s) of the act as herein then he has to satisfy that the workman is not employed for hire or reward. Herein, the claimant has successfully proved that he has been employed for hire or reward; therefore, he is a workman because admittedly, he worked on the post of SafaiKaramchari since 16.10.2010 and his job was of manual nature. He has been paid at the rate of Rs. 7,500/- per month initially; therefore, no question arises that he is not a workman.

13. Management has further taken the plea that the workman's service is purely on contract basis and it was stipulated in the initial contract and subsequent contracts which were extended from time to time that his service can be terminated at any time without assigning any reason. He had taken the plea of exception as prescribed in section 2 (oo) that is non-renewal of the contract. However, the plea raised by the

management in its written statement is not tenable because of the fact that the contract has been renewed from time to time for a period of six months to a year and it has been continued in the span of seven years and suddenly the claimant's service has been terminated because his behavior is not up to mark. However, no evidence has been brought by the management to prove the fact that his behavior is not up to mark. Section 2 (oo) which defines the definition of retrenchment states that the contract which has been excluded within the definition of retrenchment shall be for a specific period but admittedly the workman's job is perennial and regular in nature and his contract has been extended without any break for seven years. Therefore, the case of the workman does not fall within the exception created by the section 2 (oo) of the act.

14. Now come to the next question whether the service of the workman has been terminated illegally. Section 25F couched in a negative form, it imposes a restriction on the employer's right to retrench the workman and laid down that no workman employed in any industry who has been in a continuous service for not less than one year under an employer shall be retrenched until he has been given one month notice in writing indicating the reasons for retrenchment and the period of notice has been expired, or the workman has

been paid for the period of notice and he has also been paid at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excesses of six months and notice in the prescribe manner has been served on the appropriate government. These provisions are mandatory in nature. Admittedly, the respondent has not complied with any condition of retrenchment under the impression that the workman'sservices can be terminated at any time which is a false creation. Hence, it is held that the service of the workman has been terminated illegally. Therefore, issue no. 1 and 2 goes in the favor of claimant and against respondent.

Order

In view of the findings in issue no. 1 and 2, naturally the workman whose service was terminated illegally is required to be reinstated. Hence, this tribunal orders that the workman be reinstated within four weeks from the date of passing of this award with full back wages. Award is accordingly passed. Copy of this award be sent to the appropriate government for notification U/S 17 of the I.D Act. File is consigned to record room.

ATUL KUMAR GARG
Dated25.07.2024 Presiding Officer
CGIT – cum – Labour Court – II