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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 21.02.2023**Pronounced on: 16.05.2023*

+ W.P.(C) 15941/2004

NARESH PAL

..... Petitioner

Through: Mr. Anuj Aggarwal, Ms.
Meghna De and Ms. L.
Gangmei, Advocates.

versus

FOOD CORPN.OF INDIA

..... Respondent

Through: Mr. Rishi Awasthi, Mr.
Piyush Vatsa and Mr. Rahul
Kumar Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. In the present Writ Petition, the Petitioner/Workman is assailing the Award dated 27.01.2004 (*'Impugned Award'*), passed by the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, New Delhi, in I.D. No. 100/1996 titled as '*Naresh Pal Vs The General Manager, M/s FCI Project Implementation*'.

**RELEVANT FACTS FOR ADJUDICATION OF THE
PRESENT WRIT PETITION**

2. It is the case of the Petitioner/ Workman that he joined the service of the Respondent/Management as a daily rated muster roll Driver w.e.f 01.02.1995. His last drawn wages were



Rs.2100/-. It is the allegation of the Petitioner/Workman that the Respondent/Management terminated his service w.e.f 09.05.1995 without assigning any valid reason thereof.

3. Being aggrieved by the termination, the Petitioner/Workman raised an industrial dispute. The Central Government, Ministry of Labour, vide its Order No. L-22012/117/96-IR(C-II) dated 06.11.1996 has referred the following reference to the learned Industrial Tribunal for adjudication:

“Whether the action of the Management FCI in terminating the services of Sh. Naresh Pal, Driver w.e.f 09.05.1995 is justified? If not, what relief the concerned workman is entitled to?”

4. The Petitioner/Workman filed statement of claim alleging that he joined the service of the Respondent/Management w.e.f 01.02.1995 as a daily rated muster roll Driver. He was being paid a fixed salary of Rs. 2100/- p.m where as his counterparts, doing similar work were paid salaries in the pay scale of Rs.1200-2040 with usual allowance admissible under the Rules. The Petitioner/Workman further alleged that his services were terminated w.e.f 09.05.1995 without assigning any valid reason thereof. It is the case of the Petitioner/ Workman that the post against which he was working is of a regular and permanent nature and still existing. The Workman has acquired the status of a permanent employee after 90 days of continuous employment as provided in Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 applicable to the Workman and Management. The Petitioner/Workman



further alleged that the Respondent/Management with ulterior motive and malafide intention had showed in their record that the workman was employed only for 60 days w.e.f. 1.2.1995. He was paid 38 days wages after termination of his services, amounting to Rs.2660/- by a voucher. The Petitioner/Workman claimed that he was challaned by the Traffic Police on 06.04.1995 when he was driving Respondent/ Management's vehicle Jeep No. DL-3CE 7250. In another occasion on 04.05.1995, while the Petitioner/Workman was driving the said Jeep, it met with an accident and the Petitioner/Workman had lodged a report with the Police Station Chanakyapuri on the same day i.e. 04.05.1995, in this regard. These incidents show that the Petitioner/Workman was in employment with the Respondent/ Management in the month of April 1995 and May 1995. The Petitioner/Workman further alleged that he has not been paid wages for the month of April/May 1995. The Petitioner/ Workman has been meted out with hostile discrimination as juniors to him have been retained in service and he has been thrown out of the Job. The Respondent/Management failed to display any seniority list. The termination of the Petitioner/ Workman amounts to retrenchment under Section 2 (oo) of the Industrial Disputes Act, 1947 (**'I.D. Act'**), however, no notice was given to him, no retrenchment compensation was offered to him at the time of termination of his services. The Petitioner/Workman alleged that impugned



termination of the workman's services was violative of section 25-G and 25-H of the I.D. Act.

5. Initially, the Respondent/Management was proceeded ex-parte and ex-parte award dated 28.02.2001 was passed. The Respondent/Management challenged the said ex-parte award dated 28.02.2001 before this Court in W.P(C) No. 6119/2002. This Court, vide order dated 15.07.2003, set aside the said ex-parte award dated 28.02.2001 and remanded the said matter back to the learned Industrial Tribunal for fresh adjudication.
6. Subsequently, the Respondent/Management filed written statement in which it was stated that the Petitioner/Workman was engaged on hire basis as a Driver for the month of February, 1995 and March, 1995. The Petitioner/Workman was paid Rs.2100/- p.m as per the Minimum Wages Act. The Petitioner/Workman was not taken as a daily rated muster roll employee. The service of the Petitioner/Workman was never terminated and the same came to an end automatically after the fixed term, i.e. the month of February 1995 to March 1995. It was specifically denied that the Petitioner/Workman was challenged on 06.04.1995 or met with an accident on 04.05.1995 while driving the Respondent/ Management's vehicle Jeep No. DL-3CE 7250. It is the case of the Respondent/Management that the Petitioner/Workman was engaged only for a fixed term of one month and hence it is not a case of retrenchment.
7. The Petitioner/Workman stepped into the witness box as WW-1. On behalf of the Respondent/Management, Sh. N.S



Subramaniam, Joint Manager (Engineering) was examined as MW-1, Sh. M.K Hingorani, Manager (Engineering) was examined as MW-2, Sh. Suresh Kapoor, Assistant Manager (Civil Engineering) was examined as MW-3.

8. Based on the evidence adduced by the parties, the learned Labour Court, vide the impugned Award, decided the reference against the Petitioner/Workman. The learned Labour Court held that the Petitioner/Workman failed to prove that he had worked after March, 1995 and hence there was no continuous employment of 90 days as alleged by the Petitioner/Workman. In view of the same, the learned Labour Court further came to the conclusion that in the present case Industrial Employment (Standing orders) Act, 1946 is not applicable. Further, the Petitioner/Workman is not entitled to get any benefit under Section 25-F of the I.D. Act. The Petitioner/Workman failed to prove that there was any violation of Section 25-G of the I.D. Act. In view thereof, the learned Labour Court held that the termination of the Petitioner/Workman was neither illegal nor unjustified and hence dismissed the claim filed by the Petitioner/Workman.

9. Being aggrieved by the impugned award, the Petitioner/Workman preferred the present Writ Petition.

SUBMISSIONS ADVANCED ON BEHALF OF PETITIONER/ WORKMAN

10. Mr. Anuj Aggarwal, learned counsel for the Petitioner, at the outset submitted that he is confining his argument only with respect to the violation of Section 25 H of the I.D. Act.



11. Learned counsel for the Petitioner submits that in view of the law laid down by the Hon'ble Supreme Court in ***Central Bank of India Vs S. Sathyam & Ors*** reported as ***1996 (5) SCC 419*** the benefit of Section 25-H of the I.D. Act is available to all the retrenched workmen irrespective of the number of days they have worked with the Management. Section 2 (oo) of the I.D. Act defines retrenchment. There are four exceptions carved out in which termination of a workman does not fall within the definition of retrenchment. The termination of the Petitioner/Workman does not fall in any of the said exceptions. Hence the termination of the Petitioner/Workman amounts to retrenchment as defined under Section 2 (oo) of the I.D. Act.
12. Learned counsel further averred that it was the case of the Petitioner/Workman before the learned Labour Court that his termination was in violation of Section 25 H of the I.D. Act. During the course of the cross-examination, the MW-1 admitted that the Management never prepared the seniority list of retrenched workmen. MW-1 further admitted the fact that the Respondent/Management appointed another driver, Mr. Ram Sanahi in place of the Petitioner/Workman. It was also admitted by the MW-1 that the Petitioner/Workman was never offered re-employment before the engagement of Sh. Ram Sanahi. It is the case of the Petitioner/Workman that in view of the admission made by the MW-1, there is a clear violation of Section 25-H of the I.D. Act.



13. Learned counsel for the Petitioner/Workman further submits that it is settled position of law that in case of violation of Section 25-H of the I.D. Act, the workman is entitled for reinstatement. In view of the same, the learned counsel for the Petitioner/Workman prays for the setting aside of the impugned Award and reinstatement with full back wages and continuity in service.

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENT/ MANAGEMENT

14. Mr. Rishi Awasthi learned counsel for the Respondent/ Management, argued that the Petitioner/ Workman was engaged on hire basis for a fixed term from February, 1995 to March 1995. The service of the Petitioner/Management came to an end by efflux of time as he was engaged for a fixed term. Hence there was no retrenchment of the Petitioner/Workman as alleged by him in the statement of claim. The termination of the Petitioner/Workman does not amount to retrenchment as it clearly falls within the exception carved out in Section 2 (oo) (bb) of the I.D. Act. Section 25-H of the I.D. Act is not applicable to the present case as there is no retrenchment.
15. Learned counsel for the Respondent/Management further contended that after examining the evidence the learned Labour Court came to the conclusion that the Petitioner/Workman worked only for one month. Further the learned Labour Court held that there was no retrenchment and hence there was no violation of I.D. Act. The findings of the learned Labour Court



are based on the evidences adduced by the parties and hence no interference is required in this regard.

16. With these submissions, the learned counsel for the Respondent/ Management prays for the dismissal of the present writ petition.

LEGAL ANALYSIS

17. This Court had heard the arguments advanced by both the counsels for the parties and also examined the documents placed on record and the judgments relied upon by the parties.

18. Before advertng to the arguments advanced by both the parties, it is noted that this Court vide order dated 01.10.2004, issued notice only qua the applicability of Section 25 G of the I.D. Act. However, during the course of arguments, learned counsel for the Petitioner dropped all the other grounds and confined his arguments only qua violation of Section 25-H of the I.D. Act. In view of the same, this Court proceeded to examine whether the termination of the Petitioner was in violation of 25 -H of the I.D. Act.

19. Section 25-H of the I.D. Act, reads follows:

“25H. Re- employment of retrenched workmen. - Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman who offer themselves for re- employment shall have preference over other persons.”

20. The Hon’ble Supreme Court had an occasion to examine the ambit of Section 25-H of the I.D. Act in ***Management of the Barara Cooperative Marketing cum Processing Society Ltd Vs***



Workman Pratap Singh reported as **2019 (2) SCC 743**. The relevant extract of the said Judgment reads as follows:

“16. [Section 25\(H\)](#) of the ID Act applies to the cases where employer has proposed to take into their employment any persons to fill up the vacancies. It is at that time, the employer is required to give an opportunity to the “retrenched workman” and offer him reemployment and if such retrenched workman offers himself for re-employment, he shall have preference over other persons, who have applied for employment against the vacancy advertised.

17. The object behind enacting [Section 25\(H\)](#) of the ID Act is to give preference to retrenched employee over other persons by offering them reemployment in the services when the employer takes a decision to fill up the new vacancies.

18. [Section 25\(H\)](#) of the ID Act is required to be implemented as per the procedure prescribed in Rule 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as “the ID Rules”) which, in clear terms, provides that [Section 25\(H\)](#) of the ID Act is applicable only when the employer decides to fill up the vacancies in their set up by recruiting persons. It provides for issuance of notice to retrenched employee prescribed therein in that behalf.

19. So, in order to attract the provisions of [Section 25\(H\)](#) of the ID Act, it must be proved by the workman that firstly, he was the “retrenched employee” and secondly, his ex-employer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking re-employment in the services.”

21. Hence in view of the law laid down by the Hon’ble Supreme Court, it is evident that in order to establish Section 25 H of the I.D. Act, the workman is required to prove that the ex-employer has decided to fill up the vacancies in their set up.

22. In order to examine whether the Respondent/Management has taken steps to fill up the vacancies qua the post of Driver, this



Court, examined the statement of Claim filed by the Petitioner/Workman before the learned Labour Court. Except a mere averment in para 3 (x) of the Statement of claim to the effect that the *'the impugned termination is violative of Section 25 G and H of the Industrial Disputes Act, 1947 read with Rule 76 and 77 of the Industrial Disputes (Central) Rules, 1957'*, there was no pleading in the entire statement of claim regarding the violation of Section 25-G & 25-H of the I.D. Act. The Petitioner/Workman stepped into the witness box as WW-1. However, no evidence has been led to prove that the Respondent/ Management took steps to fill up the vacancies qua the post of Driver after the termination of the Petitioner/ Workman. The entire evidence of the Petitioner/Workman is completely silent on how the Respondent/Management violated Section 25-H of the I.D. Act. Hence this Court has no hesitation in holding that the Petitioner/Workman failed to prove that there is violation of Section 25-H of the I.D. Act.

23. The entire case of the Petitioner/Workman is based on the premise that MW-1 during the course of his cross-examination admitted that the Respondent/Management engaged Mr. Ram Snehi in his place in violation of Section 25-H of the I.D. Act. This Court thoroughly examined the evidence of the Respondent/Management. The Respondent/Management during their evidence placed on record Exhibit MW1/3 and Exhibit MW1/4 to prove that in the month of April 1995 and May 1995, the Respondent/Management's Jeep bearing No. DL 3CE 7250



was in possession of one Mr. Ram Snehi. Based on the said documents, MW-1 was cross-examined. Learned counsel for the Petitioner/Workman placed high reliance on the cross-examination of MW-1. The relevant portion of the cross-examination of MW-1, reads as follows:

“The workman worked under my control and supervision for the period 1.2.95 to 31.3.95. No appointment letter was issued to the workman. The post of Driver is existing in the department. The Jeep which was being plied by the present workman is also still in the possession of the department and in working condition. It is correct that after the workman, the management appointed another driver in his place. There are lot of drivers in the department. Seniority list of regular drivers only is maintained and no list of seniority is maintained regarding other drivers. There was no driver of this vehicle prior to Sh. Naresh Pal, It is denied that no person/driver in the name of Ram Sanahi was engaged in place of Naresh Pal and the payments etc. as shown by the management in the name of Ram Sanahi is false, forged and fabricated. The log book alleged in para 17 of my affidavit is neither written nor signed by Naresh pal. Now Ram Seneshi is not working. Before engaging Ram Sanahi, Naresh Pal was not asked to come again and drive the Jeep.”

24. From the cross-examination of MW-1, it is clear that the Jeep bearing No. DL 3CE 7250 was in possession of the Respondent/Management and the Respondent/Management appointed some other driver to ply the said Jeep. MW-1 placed on record the MW/3 & MW-4, the vouchers raised by Mr. Ram Snehi for the month of April & May 1995. Hence from these documents it is evident that Mr. Ram Snehi was plying the Jeep No. DL 3CE 7250 after the termination of the Petitioner/Workman. However, there was no document on record to prove



that Mr. Ram Snehi joined the service of the Respondent/Management after the termination of the Petitioner/Workman. MW-1 categorically stated in his evidence that there were a lot of drivers in the Department. It is nobody's case that Petitioner/Workman was engaged specifically to ply Jeep bearing No. DL 3CE 7250. Hence just because Mr. Ram Snehi was plying Jeep bearing No. DL 3CE 7250 after the Petitioner's termination, it is not correct to presume that the Respondent/Management violated Section 25-H of the I.D. Act. The Petitioner/Workman has not taken any steps to summon the service records pertaining to the employment of Mr. Ram Snehi. Hence in the absence of the service records of Mr. Ram Snehi, it cannot be said that Sh. Ram Snehi was appointed after the termination of the Petitioner/Management.

25. As discussed herein above, the Petitioner/Workman has not led any evidence to prove that the Respondent/Management violated Section 25-H of the I.D. Act. It is the contention of the learned counsel for the Petitioner/Workman that MW-1 admitted in his evidence that the Respondent/Management was not maintaining any seniority list of retrenched workmen. In view of the same, learned counsel for the Petitioner/Workman argued that adverse inference is required to be taken against the Respondent/Management to the effect that Mr. Ram Snehi's appointment was in violation of Section 25-H of the I.D. Act. This argument of the learned counsel for the Petitioner/Workman is contrary to the law laid down by the Hon'ble Supreme Court in ***State Bank***



of Bikaner & Jaipur Vs Om Prakash Sharma reported as **2006 (5) SCC 123**. The relevant portion of the said Judgment, reads as follows:

“10.....Rule 77 reads thus:

"Maintenance of seniority list of workman: -

The employer shall prepare a list of all workman in the particular category from which retrenchment is contemplated arranged accordingly to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial before the actual date of retrenchment."

11.By reason of the said Rule, the employer has been enjoined with a duty to prepare a list of all workmen in the particular category from which retrenchment is contemplated. Such a list was not prepared. The consequence of non-maintenance of the said document has been provided in Rule 79 of the ID Rules, being imposition of penalty. In case of violation on the part of the management to comply with the statutory provisions, thus, it could have been subjected to penalty. Rule 77 may be mandatory in character as was urged by Mr. Calla, but, only because the appellant herein did not maintain the prescribed register, the same by itself would not mean that the respondent herein would be entitled to be reinstated in service with back wages without establishing that the provision of Section 25 H was violated....."

26. In the present case the Petitioner/Workman had miserably failed to prove that there was any violation of Section 25-H of the I.D. Act.

27. In view of the detailed discussions herein above, this Court is of the considered view that there is no evidence to prove that the termination of the Petitioner/Workman was in violation of



Section 25-H of the I.D. Act. The impugned Award is based on correct appreciation of evidence adduced by the parties. There is no illegality or perversity in the impugned award. Hence this Court is not inclined to interfere with the impugned Award while exercising the limited jurisdiction under Article 226 of the Constitution of India.

28. Accordingly, the present Writ Petition is hereby dismissed. No order as to costs.

MAY 16, 2023

GAURANG KANTH, J.



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