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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: December 15, 2015

+ **W.P.(C) 52/2005**

GURDAYAL Petitioner
Through: Mr. Sanjeev Singh, Advocate

versus

CENTRAL COTTAGE INDUSTRIES CORPORATION
..... Respondent
Through: Mr. Amit Sarkar, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

% **JUDGMENT**
(ORAL)

Impugned Award of 8th September, 2003 dismisses claim petition of petitioner while holding that no relationship of employer-employee exists between the parties.

It is a matter of record that petitioner was permanent employee of respondent-Central Cottage Industries Corporation (hereinafter referred to as CCIC) since the year 1971 and the workers of CCIC were transferred to *M/s. Samovar* by way of Settlement of 9th February, 1981 and as per Clause 2 thereof, if any vacancy occurred in CCIC, then preference was to be given to the workers of CCIC. The workmen-Union of respondent-CCIC had sought interpretation of the Settlement of 9th February, 1981

and vide Award of 10th October, 1996 it was clarified as under: -

“I, therefore, hold as a result of above discussion that contention of the workmen is correct that according to Clause 2 of above mentioned settlement dt. 9/2/81 ex-employees of Bankura Cafe who were in the employment of the said Bankura Cafe on 8/2/81 have a right to claim that in any vacancy which occurred in Central Cottage Industries Corporation after the said settlement any of them can be absorbed, then preference should be given to them in employment. Clause 2 of the said settlement cannot be interpreted in any other way and the contention of the management that these person could be engaged only against the posts of Cooks, Assistant Cooks, Pantrymen, Butlers, Waiters, and Masalchis, is wrong. Reference is answered accordingly.”

Petitioner's Reference of his non-absorption by respondent-CCIC in terms of Clause 2 of the aforesaid Settlement of 9th February, 1981 stands answered vide impugned Award. The finding returned in the impugned Award is as under: -

“Once the services of the workman were transferred from C.C.I.C. to Samovar after settlement of account the relationship of employee and employer came to an end w.e.f. 9.2.81. Further, after more than 14 years serving with M/s. Samovar the workman received his full and final dues from M/s. Samovar, therefore, there was no occasion of reviving the relationship of the employee and employer the workman and M/s. C.C.I.C. However, as per the assurance in clause 2 the Management of C.C.I.C. was to consider the workman for employment if the vacancies were available after the expiry of the contract. This was not the service condition for the workman between the employer and employee but appears to be a gesture of goodwill on humanitarian ground. This issue is

accordingly answered against the workman and in favour of the management”

At the hearing, to assail the afore-noted findings, learned counsel for petitioner contended that despite petitioner's request prior and subsequent to the closure of *Bankura Cafe*, he had not been absorbed by respondent-CCIC although many of the similarly placed employees, like petitioner, have been absorbed by respondent. It was submitted that in the face of the first Award of 10th October, 1996, the finding returned in the impugned Award of there being no relationship of employer-employee between the parties, cannot be sustained and deserves to be set aside and a direction ought to be issued to respondent to absorb petitioner.

Learned counsel for respondent supported the impugned Award and submitted that the Managing Director of respondent had clearly stated in his evidence that there is no vacancy against which any of the employees of *M/s. Samovar* could be absorbed and that petitioner has not led any evidence as to why he had not applied for any absorption and so, this petition deserves dismissal.

Upon hearing and on perusal of the impugned Award, the earlier Award of 10th October, 1996, the evidence on record, I find that the categorical stand of respondent in the evidence was that they did not have any vacancy after the settlement and so, petitioner could not be absorbed. In the cross-examination of respondent's witness, it has been vaguely brought out that some of the employees were absorbed. But, it has not been brought out when they were absorbed. In the face of such vague evidence, it cannot be said that the mandate of Award of 10th October, 1996 has not been complied with. Even if the finding returned on Issue

No.3 in the impugned Award is set aside, still no direction can be issued to absorb petitioner as it has not been brought out clearly that any vacancy existed for absorption of petitioner.

During the course of hearing, it was put to learned counsel for petitioner as to what is the age of petitioner today and it was informed that petitioner is aged about 57-58 years.

In view of the aforesaid, this Court is of the considered view that no direction for absorption of petitioner can be issued nor it can be said that petitioner is entitled to any monetary benefits. This petition is accordingly dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 15, 2015

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