

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

Reserved on: 25.01.2019
Date of decision: 06.02.2019

+ **W.P.(C) No.2292/2016**

DEEPALI CHUGH Petitioner

Through Mr. Rahul Sharma, Advocate with
Ms. Ravi Birbal, Advocate.

versus

MANAGING DIRECTOR (SOUTH ASIA) M/S. TURNER
INTERNATIONAL INDIA PVT LTD. Respondent

Through: Mr. Sanjoy Ghose, Advocate with
Mr. Rhishabh Jetley, Advocate

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. By way of the present petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the Award dated 31st August, 2015 passed by the learned Labour Court in LIR No.266/13. Vide the impugned Award, the learned Labour Court, while holding that the petitioner was a workman, has rejected her claim that her services were terminated illegally or unjustifiably by the respondent/Management. The learned Labour Court, however, has held that the petitioner is entitled to receive a further sum of Rs.96,820/- from the respondent/Management towards special bonus

and, therefore, directed the respondent to pay the said amount to her along with interest at the rate of 9% per annum from the date of her termination.

2. The brief facts emerging from the record that are necessary for the adjudication of the present petition may be noted at the outset. The petitioner was appointed as a Receptionist/Secretary in the respondent's office at Delhi on 5th November, 1996. Her services were terminated w.e.f. 7th July, 2012 pursuant to the respondent's letter dated 7th June, 2012, whereby she was informed that in accordance with the terms of her employment contract, compensation in the below mentioned terms would be paid to her by electronic transfer or cheque on or about the usual monthly pay roll date :-

*“(a) An amount of INR 22,343.00, being your current base salary for the period 1 July 2012 to the termination date;
(b) An amount of INR 281,524.00, in view of your accrued but unused vacation leave up to the termination date (63 working days);
(c) An amount of INR 625,609.00, being a gratuity payment as required by Indian law; and
(d) An additional amount of INR 782,011.00, being a severance payment.”*

3. Thus, compensation amounting to Rs.17,11,487/- was accordingly remitted to the petitioner's account on 9th August, 2012. Soon thereafter, she served a legal notice on the respondent seeking her reinstatement in service, wherein she did not raise any grievance regarding the remittance of the compensation amount being delayed in any manner, but claimed that she had been treated in a discriminatory manner and had not received the compensation which

had been orally promised to her. The respondent sent a reply to the said notice stating that the petitioner having unconditionally accepted the compensation amount of Rs.17,11,487/- paid to her as per the terms of her appointment, she was estopped from challenging her termination. Consequently, the petitioner raised an industrial dispute claiming that despite there being no allegation against her, her services had been illegally terminated by the respondent even though persons junior to her had been retained in service. The industrial dispute was then referred to a Labour Court, under the following terms of reference:-

“Whether Ms. Deepali Chugh, D/o Shri S.C. Chugh is a workman as defined under the ID Act, 1947 and if so, whether the termination of the services of Ms. Deepali Chugh by the management after paying all legal dues and compensation to her, is illegal and/or unjustified and if so, to what relief is she entitled?”

4. In her claim petition before the learned Labour Court, the petitioner besides alleging that she had been terminated without any inquiry, also raised a grievance that she was entitled to receive three months' notice or three months' salary in lieu thereof in accordance with Section 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as “ID Act”) as the respondent's establishment had more than 100 employees at the time of her termination. In its reply filed before the learned Labour Court, the respondent not only denied that the petitioner was a workman but also pointed out that she had been offered the amounts payable to her in accordance with the terms of her appointment at the time of her termination itself, but as she failed

to collect the same, the respondent was compelled to transfer the same in her bank account, which amount she had not only received but had also utilised and was, therefore, estopped from now challenging her termination. The respondent also stated that the two juniors referred to by the petitioner, were working in Mumbai, which place of posting was also offered to her in view of the fact that the job she was performing at Delhi had become redundant, but the petitioner had declined the said offer.

5. In the light of the pleadings and the evidence led by the parties before it, the learned Labour Court vide its impugned Award while holding that the petitioner was a workman falling within the definition of Section 2(s) of the ID Act, rejected her claim on merits and did not agree with her contention that her termination was illegal or unjustified or that the respondent/Management had failed to pay any of her legal dues or compensation. The observations of the learned Labour Court in this regard are reproduced hereinbelow for the sake of ready reference:-

“14. Vide letter dated 07.06.2012, management offered to workman following amounts:-

“(a) An amount of INR 22,343.00, being your current base salary for the period 1 July 2012 to the termination date;

(b) An amount of INR 281,524.00, in view of your accrued but unused vacation leave up to the termination date (63 working days);

(c) An amount of INR 625,609.00, being a gratuity payment as required by Indian law; and

(d) An additional amount of INR 782,011.00, being a severance payment.”

Claimant has admitted payment of a sum of Rs.17 lac approximately from the management. This amount was

credited to her bank account, about two months' after termination of her services. Although she volunteered that she had not accepted this amount, it has come in her cross examination, that she has utilized this money. She admitted to have not filed any letter or document to suggest that she accepted the said amount under protest.

Once she accepted the amount offered by the management as per release order/termination letter without any protest, and even utilised the same, when the nature of work of her job had become redundant, as admitted by her, this court finds merit in the contention raised by Ld. AR(M) that by her conduct and consent, the claimant was stopped from challenging her release/termination from service.

In oswal's case (Supra), notice dated 29.05.1996 was issued to the State Government U/s. 25-O of the Act. Notices were also issued to the workmen on 12-6-1996 whereupon a purported settlement was arrived at on or about 14-6-1999 in terms of Section 12(3) of the Act. The respondents questioned the said settlement by filing a writ petition which was allowed. Therein Hon'ble Court observed that such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

The consequences flowing from such mandatory requirements as contained in Section 25-N and 25-O must, therefore, be given full effect. Hon'ble Court further observed that indisputably, the industrial undertaking belonging to the appellant herein attracted the provisions of Chapter V-B of the Act and consequently the provisions referred to in Section 2(s) including Section 25-J shall apply in relation thereto.

In view of given facts and circumstances of this case, the decisions referred to by Ld. AR(W) in this regard do not come to the aid of the claimant.

In view of the details of the amount offered by the management to the claimant at the time of her release/termination from service and utilized by her, it cannot be said that the management failed to pay any legal dues and compensation to the claimant.

6. The learned Labour Court also rejected the petitioner's plea that the respondent had discriminated against her by terminating her while retaining the services of her juniors, by observing as under:-

“So far as claim of the claimant that persons junior to her have been retained by the management, it is in her cross-examination that when the nature of work of her job at Delhi became redundant, management offered her job at Mumbai. Although, according to the claimant the management subsequently, short-listed another candidate for the post in Mumbai, she has not led any evidence to suggest that the management retained in service any person to her, at Delhi, while releasing her/terminating her from service at Delhi.”

7. The learned Labour Court, thus, found no infirmity or illegality in the petitioner's termination. However, after noticing that a sum of Rs.96,820/- by way of special bonus had not been paid to her by the respondent on the ground that the said offer was conditional upon them receiving a counter-signed copy of the termination letter from the petitioner, which letter had never been received by them, the learned Labour Court directed the respondent to pay her the said amount alongwith interest at the rate of 9% per annum from the date of her termination. The Tribunal also observed that once the petitioner had accepted the amount of Rs.17,11,487/- without any protest, it could safely be said that she had accepted the terms of the termination letter. In this regard, it may also be appropriate to refer to Paragraphs 17 and 18 of the impugned Award, which read as under:-

“17. Ld. AR (W) has submitted that the management has not so far paid a sum of Rs.96,820/- to the claimant as offered vide letter dated 07.06.2012. On the other

hand, Ld. AR (M) has submitted that the management offered to claimant special bonus amount of Rs.96820/-, but it has not so far been paid as she did not send from the side copy of the release/termination letter dated 07.06.2012.

The management, vide release/termination letter dated 07.06.2012, offered to the claimant a sum of Rs.96,820/-. No doubt, the claimant didnot send the countersigned copy of this letter to the management, she having accepted the other amount of Rs.17,11,487/-, without any protest, it can safely be said that she agreed to the terms of this letter. Accordingly, the management is required to pay to the claimant a sum of Rs.96,820/- towards special bonus as offered vide letter dated 07.06.2012. But, on account of non payment of this special bonus, the release/termination of the claimant cannot be termed to be in violation of the provisions of the Act, particularly when the claimant herself accepted the aforesaid amount offered by way of compensation.

18. In view of the above discussion, this court finds that although the claimant was a workman, management did not terminate her services illegally or unjustifiably, and rather her services came to be terminated, the nature of work of her job at Delhi having become redundant. The claimant is however, held entitled to a sum of Rs.96,820/- from the management towards special bonus amount offered by the management, but not paid so far. She is also held entitled to interest @ 9% p.a. from 07.07.2012 till its payment/realization."

As a result, the issues are decided accordingly, claim is partly allowed holding that she is entitled to a sum of Rs.96,820/- from the management towards special bonus amount along with interest @ 9% p.a. from 07.07.2012 till its payment/realization. Reference is answered accordingly."

8. In compliance of the impugned Award, the respondent on

23.10.2015 remitted to the petitioner an amount of Rs.1,25,134/-, i.e., the sum of Rs.96,820/- towards special bonus along with interest, by way of a cheque dated 5.10.2015, which was duly encashed by her. About five months after accepting the amount awarded to her under the impugned Award, the petitioner has approached this Court by way of the instant writ petition.

9. Mr.Rahul Sharma, learned counsel for the petitioner while impugning the Award, has made three primary submissions, the first and foremost being that in view of the admitted position that the compensation amount as required under Section 25F, was remitted to the petitioner's account only after a period of more than two months from the date of her termination letter, the petitioner's termination was non-est, thereby entitling her to be re-instated in service with all consequential benefits. He states that mere acceptance or utilization of the retrenchment compensation by the petitioner, which was admittedly paid belatedly, cannot imply that she had surrendered her constitutional rights and, therefore, the impugned award is liable to set aside on this ground alone. In support of his contention, he places reliance on the decisions of the Supreme Court in *Anoop Sharma v. Executive Engineer, Public Health Division No.1 Panipat (Haryana) [(2010) 5 SCC 497]* and *Nar SinghPal v. Union of India [AIR(2000 SC 1401)]* as also of this Court in *Management of M/s Brahmaputra Board v. Ashok Kumar [2006 (5) AD 67 (Delhi)]*.

10. Taking his aforesaid plea further, Mr.Sharma submits that the amount of special bonus to which even the learned Labour Court had found the petitioner to be entitled, was admittedly paid to her only in

October, 2015. The delay in the payment of the bonus amount in itself shows that the termination order had been passed without releasing the petitioner's complete dues and, thus, falls afoul of Section 25F of the ID Act.

11. Mr.Sharma further submits that once the petitioner had made a categorical statement not only in her statement of claim but also in her examination-in-chief, that the respondent/establishment had more than 100 employees on the date of her termination, on which aspect she was never cross-examined, the learned Labour Court could not have rejected her plea that she could be terminated only after giving her three months' notice or salary in lieu thereof by following the procedure under Section 25N of the ID Act and not by tendering her only one month's salary as per Section 25F of the ID Act.

12. The last and final submission of Mr. Sharma is that the learned Labour Court has simply brushed aside the petitioner's specific pleas that two juniors namely, Shuchi Gupta and Mr.Roshni Dixit, who were carrying out the same duties as were being carried out by the petitioner, had been retained in service, thereby making it evident that the petitioner had been treated in a discriminatory manner and her services had been illegally terminated. He, therefore, prays that the impugned Award be set aside.

13. On the other hand, Mr.Sanjoy Ghose, learned counsel for the respondent while opposing the petition, states that the present writ petition is not maintainable as the respondent had accepted the impugned Award by encashing the cheque for Rs.1,25,134/- drawn in her favour by the respondent in compliance of the said Award. He

submits that once the petitioner had accepted the relief granted to her under the impugned Award, she could not subsequently turn around and urge that the same was illegal and liable to be set aside. He further submits that the petitioner is guilty of concealing material facts from this Court, having failed to disclose in her writ petition the factum of her having accepted the amount directed to be paid to her under the impugned Award. By placing reliance on the decision in *Ananta Lal Pakrasi v. Jnanada Sundari Bebya and Ors.* [AIR 1930 Cal 255], *Goel Associates v. Din. Corp. Group Housing Society Ltd.* [MANU/DE/0293/1998], *Rajinder Parshad v. Labour Court and Anr.* [1989 (59) FLR 405] and *Shiba Prasad Mukerjee v. Dhirendra Chandra Mukherjee* [(1961) ILR 2 Cal 383], he urges that the petition is liable to be dismissed with exemplary costs on this ground alone.

14. Mr.Ghose further contends that even though the documents on record clearly establish that the petitioner could not have been held to be a workman as she was carrying out supervisory and managerial duties as a Human Resource Administrator, keeping in view the fact that the petitioner had not only accepted the compensation amount paid to her on 09.08.2012 but also the special bonus alongwith interest paid to her as per the impugned Award, the respondent did not take any steps to challenge the Award despite being aggrieved by the finding of the learned Labour Court that the petitioner was a workman. Futhermore, even if there was any technical violation of Section 25F on the part of the respondent in not actually remitting the compensation to the petitioner alongwith the termination letter, she

had been adequately compensated having received more than 18 lakhs from the respondent. Therefore, there is no reason as to why this Court while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India, should interfere with the well-reasoned Award passed by the learned Labour Court.

15. Having heard the learned counsel for the parties at length and perused the record, I find that the preliminary issue which arises for my consideration is whether the petitioner can be allowed to challenge the impugned Award, after having accepted and encashed without any demur, the cheque towards special bonus and interest sent by the respondent in compliance of the said Award. In my opinion, the petitioner having chosen to accept and encash the cheque sent by the respondent without any protest or demur and that too five months before filing the present petition, is in itself sufficient to disentitle the petitioner from any relief. I cannot also lose sight of the fact that there is not even a whisper in the entire writ petition about the petitioner having received and encashed the cheque towards the awarded amount and, therefore, the petitioner by her conduct is not only estopped from challenging the Award but is also guilty of concealment of material facts from this Court. Thus, in the facts and circumstances of the present case, there is no reason for this Court to interfere with the impugned Award in exercise of its writ jurisdiction.

16. Reference may be made to the decision in ***Goel Associates v. Din. Corp. Group Housing Society Ltd.*** [MANU/DE/0293/1998] wherein the Court, while rejecting a challenge to an arbitration award by a party after receiving the awarded amount, had observed as

under:-

“4. In the decision in M/s.Govindji Jevat Company’s (supra), facts whereof are somewhat identical to the facts of this case, disputes and differences which resulted in a claim being filed by the petitioner before the arbitrators, an ex parte award came to be passed for Rs.1,15,164.13 in favour of the petitioner and on appeal by the respondent the amount was reduced to Rs.37,500/- and interest. After the appeal was dedicated, a the respondent sent to the petitioner a sum of Rs.38,944.67 through a bank draft in full implementation of the award along with letter dated 24.3.1980. This amount included aforesaid principal amount and the interest. After encashing the draft, the petitioner sent a letter to the respondent stating tht it intended to take proceedings to set aside or modify the award and that the demand draft was accepted without prejudice to the petitioner’s rights and contentions in the matter. Thereafter, petition was filed challenging the award in the High Court. One of the contentions advanced on behalf of the respojdent before the High Court was tht having accepted the payment of Rs.38,944.67, the petitioner is stopped from challenging the award. This contention was upheld and the petitioner was held to be not maintainable. While, arriving at this conclusion Bombay High Court heavily relied upon a judgment of the Division Bench of the Court dated 28th August, 1952 in Appeal No. 32/52 in Kantilal Jiwabhai Vs. Vadila Chunilal. Para 6 of the judgment on page 77 of the report which is material reads thus:-

“Coming to the first contention of Mr.Jhunjhunwala, it appears to me clear from the authorities cited by him that in the facts and circumstances of this case, the petitioner is stopped from challenging the award. Though several authorities were cited, I would refer only two three of them. One is a judgment of the Division Bench of this Court consisting of Chagla C.J. and Bhagwati J. Dated 28th August 1952 in Appeal No.32 of 1952. Kantilal Jiwabhai Vs. Vadila Chunilal. In that case an award was given in favour of the appellant against the respondent for Rs.22,736-15-10. And one of the respondents sent a cheque for Rs.21,736-15-10. This cheque was accepted by the appellant and was sent to the bank for encashment. Even before the cheque was sent the appellant had

intimated to the respondents his intention to challenge the award. The appellant also replied to the letter sending the cheque under protest and without prejudice to his rights and contentions. It was held by the single Judge that the appellant having received the benefit under the award could not challenge the award relying on the principle that a person cannot approbate and reprobate. This judgment was upheld by the Division Bench. While dismissing the appeal the Division Bench held, inter alia, as follows:-

But in this case the appellant's case was that the award was bad and illegal, and that the arbitrator had no right to make it. Therefore, nothing whatever was due to the appellee under the award, and acceptance of any amount awarded to him under the award is clearly a case where he accepted a benefit under the award and thereby acquiesced in the correctness of the award and the validity of the award, and thereby precluded himself from challenging the award.

The Principle on which the learned Judge acted is to be found in Russell on Arbitration, 14th Edition, page 19; and what the learned author says is that it will be good answer to a motion to set aside an award if the opposing party can show that the party moving has acquiesced in the award by knowingly accepting a benefit under it. The emphasis on 'knowingly' is in order to point out that the acceptance of the benefit under the award should not be in ignorance of the fact that the award has been made. If the party accepting the benefit wishes to challenge the award, as in this case there cannot be the slightest doubt that the benefit was accepted knowingly by the party.

But before he filed this petition he never thought it advisable to return the cheque or the amount of the cheque which he had cashed and which he had utilised. It is difficult to see how it would ever be open to a party solemnly to get up in Court and challenge the award in respect of which he has obtained a

substantial behalf and which he never thinks of returning to the other side.”

5. Sum and substance of the remaining four decisions referred to above is also that where a party to an award has taken benefit under it, it cannot turn round, and say that the award is invalid.

6. Ratio in the aforementioned decisions applies on all fours to the facts of the present case. I am unable to agree with the submission advanced on behalf of the petitioner objector that the objections which seek to assail the illegal rejection of the petitioner's balance claim of Rs.15,87,600/- by the arbitrators, are still legally maintainable.”

17. However, although I am of the considered opinion that the petitioner is estopped from challenging the impugned Award by virtue of her own conduct, I deem it appropriate to still deal with the other issues raised by learned counsel for the petitioner. As noted hereinabove, learned counsel for the petitioner has vehemently contended that since the compensation in terms of Section 25F of the ID Act was not remitted to the petitioner alongwith the termination letter but was subsequently remitted by the respondent in the petitioner's bank account, the petitioner's termination was non-est and she was entitled to be reinstated with full backwages. Having given my thoughtful consideration to this aspect, I am of the opinion that there can be no doubt about the fact that there has been a violation of Section 25F of the ID Act inasmuch as the respondent did not remit the compensation amount to the petitioner alongwith the termination letter on 07.06.2012, which was eventually remitted to her account only after two months, i.e., on 09.08.2012. However,

the question which still needs to be determined is as to the effect of the aforesaid violation. Would it imply that this violation would automatically entitle the petitioner to re-instatement as is contended by learned counsel for the petitioner, inspite of the admitted position that she had accepted the compensation amount as remitted to her even before raising the industrial dispute. The answer to my mind is a clear 'No'. Even if there was any violation of Section 25F of the ID Act, the fact that the petitioner had accepted the compensation amount paid to her by the respondent without any objections whatsoever, is sufficient to disentitle her from claiming re-instatement, in the light of the settled legal position that even if an order of retrenchment is found to have been passed in violation of section 25F of the ID Act, the same cannot result in an order of automatic re-instatement and the Court may in appropriate cases grant only compensation.

18. In the facts of the present case, even if the contention of the learned counsel for the petitioner, that the mere utilization of the compensation amount by the petitioner would not debar her from showing that there was a violation of Section 25F of the Industrial Disputes Act, were to be accepted, the petitioner in my view has been adequately compensated. As against her monthly basic salary of Rs.22,343/-, she has already received over Rs.18 lakhs as compensation from the respondent, which amount includes the sum of Rs.7,82,011/- paid to her as severance payment as also the sum of Rs.1,25,134/- paid to her towards special bonus alongwith interest in compliance of the impugned Award.

19. The decision of this Court in *Brahmaputra Board (supra)* as also the decisions of the Supreme Court in *Anoop Sharma (supra)* and *Nar Singh Pal Vs. Union of India (supra)* relied upon by the learned counsel for the petitioner, do not in any manner forward the petitioner's case and are not at all applicable to the facts of the present case, wherein the petitioner without any demur or objection not only accepted the compensation amount of over 17 lakhs remitted to her in accordance with the termination letter but also subsequently accepted the amount remitted to her in compliance of the impugned Award.

20. I have also considered the submission of the learned counsel for the petitioner that the respondent having had more than 100 employees, the petitioner could be terminated only after complying with the provisions of Section 25N of the ID Act, which has admittedly not been in done in the present case, as the respondent purportedly complied with only Section 25F of the Act. However, I find that nothing was brought on record either before the learned Labour Court or this Court to support the petitioner's bald plea in this regard.

21. Furthermore, even though the petitioner has taken pains to urge that two of her juniors were retained whilst her services were terminated, which action was allegedly discriminatory, I find absolutely no merit in the said contention in the light of the admitted position that the two juniors referred to were stationed in Mumbai and the petitioner had refused the respondent's offer to post her there when the nature of her work at Delhi had become redundant.

22. For the aforesaid reasons, I find no infirmity in the impugned Award. The writ petition being meritless, is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 06, 2019/aa