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

% *Decided on: 19.02.2020*

+ **W.P.(C) 1905/2020**

M/S SENTINELS SECURITY (P) LTD. Petitioner

Through: Mr. Amod K. Dalela, Adv. with
Mr. Pradeep Pandey, Adv.

versus

SMT. SUDHA SINGH Respondent

Through: Mr. Rajiv Agarwal, Adv. with
Ms. Meghna De, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 6660/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

W.P.(C) 1905/2020 & C.M. APPL. 6661/2020

3. This petition impugns the award dated 03.08.2019 passed by the learned Labour Court in new I.D. No. 6662/2016, which directed the reinstatement of the respondent with full back wages at the rate of minimum wages applicable in the case of skilled workman. In default of payment within 30 days from the publication of the award, 9% simple interest is payable to her, till the date of realization. It is the petitioner's case that the workman had resigned from the previous spell of her employment and was re-employed on 01.02.2014. She was assigned duties

at 'Chunmun' shop at Faridabad as a lady security guard, which she did not join despite the lapse of three days despite the issuance of a Movement order to her on 23.02.2015, Faridabad. It is further stated that she had already resigned from the previous employment. However, the letter of resignation was never made a part of the proceeding before the learned Labour Court. Hence, the said contention is untenable. The petitioner's case before the learned Tribunal was as under:-

"PART-E

MANAGEMENT EVIDENCE

13. The management examined Sh Ashok Kumar Chaudhary, its official as MW1 who also deposed on the lines of the defence taken in the reply to the claim and also proved on record the documents in support of its case.

14. During the course of cross examination as discussed in Part D above, the said MW1 admitted genuineness of appreciation and merit certificates issued in the year 2010 and 2012 as well as the ESI registration form relied upon by the claimant and accordingly, exhibited as Ex.MW1/W2, Ex.MW1/W3 and Ex.MW1/W1 respectively.

15. He also stated that he cannot admit or deny date of joining of the claimant as of 01.03.2009.

16. He also admitted that neither any charge sheet nor any domestic enquiry was issued/ initiated against the claimant w.r.t. her so called unauthorized absence from duties.

PART-F

FINDINGS/CONCLUSION

17. After considering the claim, reply, documents and the evidence led on record, the issue wise decision of the court is as under

ISSUE No.I : Whether the workperson was not the regular employee in terms of section 25B of ID Act ? OPM

18. The present issue has been framed as the management has taken a stand to the effect that the claimant joined the management on 01.02.2014 instead of 01.03.2009 as claimed by the claimant.

19. The management has sought to place reliance upon appointment letter etc bearing the said date of 01.02.2014 w.r.t. the claimant.

20. However, as discussed in Part D and E above, the management's witness MW1 has admitted correctness of certificate of appreciation and certificate of merit issued by the management to the claimant in the year 2010 and 2012 exhibited as EX.MW1/W2 and EX.MW1/W3 respectively as well as admitted genuineness of ESI registration certificate of the claimant as' Ex.MW1/W1.

21. Accordingly, by virtue of said Ex.MW1AV2 and Ex.MW1AVS there remains no doubt that the claimant was employed with the management even in the year 2010 and hence, the stand taken by the management of the claimant having joined it in 2014 stand demolished but rather the stand taken by the claimant that though she joined the management on 01.03.2009 but appointment letter was issued later on bearing the prospective date of 01.02.2014 stand proved in view of the said exhibits.

22. In these circumstances, as the claimant is held to be an employee of the management since 01.03.2009, second defence taken by the management that she having allegedly left the job on 15.03.2014 and thereby did not complete 240 days of continuous service in the immediate preceding year prior to the date of alleged termination/abandonment, also stand demolished.

23. Issue no.1 is accordingly, held in favour of the claimant holding that she was a regular employee of the management in terms of Section 25B of the Industrial Disputes Act.

ISSUE No.2 : Whether the workperson unauthorizedly absented herself from the service w.e.f 15.03.2014 ? OPM

24. As per the management the claimant herself absented from duties w.e.f. 15.03.2014.

25. However, in view of the decision arrived at via issue no.1 whereby the court has held that the management has not come to the court with clean hands and has told a lie by fabricating the documents viz. appointment letter etc of the claimant showing her to be an employee since 2014, in contradiction to the actual date of employment as of 01.03.2009, the stand taken by the management in this respect also cannot be believed coupled with the fact that MWL during the course of his cross examination has also admitted that neither any charge sheet nor any domestic enquiry was issued/initiated against the claimant w.r.t. her so called misconduct of abandoning the job and accordingly, this issue is decided in favour of the claimant.

ISSUE No.3 ; Whether the services of the workperson has been terminated illegally and/or unjustifiably by the management; and if so, to what relief is she entitled ? OPW.

26. In view of the outcome of issue no.2, the court has no hesitation to hold that services of the claimant stand terminated illegally and unjustifiably by the management without following due process of law.

27. Issue no.3 is accordingly, decided in favour of the claimant.

ISSUE No.4; RELIEF

28. In view of the outcome of issue no.3, the claimant is held entitled to the relief of reinstatement with full backwages at the rate of minimum wages as applicable in the case of a skilled worker from time to time if the actual wages are lower than that and in case the actual wages are higher than that, at the rate of

actual wages, along with continuity of services and all other consequential benefits.

29. In case the management fails to give effect to the award within 30 days from the date of publication of the same, claimant is also entitled to simple interest @9% p.a. on the amount payable to her till the date the same is actually paid.

30. Reference answered accordingly.

31. Let copy of the award be sent to the appropriate Govt for its publication as per rules.”

4. The learned counsel for the management submits that there is no difficulty with the reinstatement of the workman, but it is aggrieved by the grant of continuity in service. In the Court's opinion the grievance is misplaced because continuity of service is a natural corollary, when there is nothing on the record to show that there was break in service. The so-called letter of resignation, sought to be relied upon by the petitioner, was never an issue before the learned Labour Court. Furthermore, it is the petitioner's own admission that the workman had been granted a Certificate of Appreciation and Certificate of Merit, in the year 2010-2012 respectively, exhibited as MW1/W2 and MW1/W3, as well as the fact that she was registered as ESI beneficiary in the year 2009-2010. The employment of the workman stood clearly established. The claimant did not approach the Court with clean hands and it has been so recorded in para 15 of the impugned order which reads, *inter alia*:-

“15. He also stated that he cannot admit or deny date of joining of the claimant as of 01.03.2009.”

5. The case is sought to be based upon the new appointment letter. The Court is of the view, that the said appointment letter is self serving and for

the benefit of the management; inasmuch as the management itself has accepted about the earlier employment, which would remain unbroken unless the workman had herself walked away from work. There being no proof of her walking away from or abandonment of service, there is a presumption of continuity of service.

6. The learned counsel for the respondent who appears on diligent watching of the Court's Cause List, in his client's interest, states that the evidence of the management is to the effect that the workman had been removed from service on account of retrenchment, by way of striking her name w.e.f. 15.03.2014. The management witness MW-1, Mr. Ashok Choudhary, had admitted in his cross examination on 30.05.2019 to the effect that:

"It is correct that w.e.f. 15.03.2014 and onwards, name of the claimant stand struck off the muster rolls. As the services of the claimant were never terminated by the management, there was no question of issuing any notice or paying notice money in lieu thereof to her or service compensation also. There is no seniority list of employees ever maintained by the management....."

7. The learned counsel for the respondent submits that striking-off the name from the muster roll amounts to retrenchment under section 2(oo) of the Industrial Disputes Act, 1947, which would be in violation of section 25F of the Act, as in the present case. Therefore, it would entail corollary benefits. The arguments now raised by the petitioner were not the case pleaded by it before the learned Labour Court. The learned counsel for the respondent relied upon the judgment of *H.D.Singh vs. Reserve Bank of India*, AIR 1986 SC 132,

"9. It is clear from the pleadings and from the documents noted above how the respondent Bank managed to get rid of the appellant. The disclosures made in the confidential circular make our task easy in holding that the bank was determined to adopt methods to terminate the services of the employees like the appellant. The appellant was not told that he would be struck off the rolls if he passed the matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The case of the bank is that he was orally informed that his name has been struck off. Striking off the name of a workman from the rolls by the employer amounts to "termination of service" and such termination is retrenchment within the meaning of Section 2(oo) of the Act if effected in violation of the mandatory provision contained in Section 25-F, and is invalid. In this case the facts need only to be stated to hold that the petitioner's name had been struck off the list contrary to the mandate contained in Section 25-F. This Court has held in *Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee* [(1977) 4 SCC 415 : 1978 SCC (L&S) 1 : (1978) 1 SCR 591] that striking off the name from the rolls by the management is retrenchment within the meaning of Section 2 (oo) of the Act. While reading Sections 25-F, 25-B and Section 2(oo), *Krishna Iyer, J. in State Bank of India v. N. Sundara Money* [(1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160] has observed that the words "for any reason whatsoever" occurring in Section 2(oo) are very wide and almost admitting of no exception. It was made clear that a comprehensive definition has to be effectuated to protect the weak against the strong in construing the ambit of the words contained in Section 2(oo). Pithily he observed that "without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment, at the time of retrenchment, of compensation computed as prescribed therein read with Section 25-B(2)".

8. According to the respondent the aforesaid was a case of retrenchment and not of abandonment of service. Whereas, the petitioner insists that it was a case of abandonment. Be that as it may, if the abandonment of service is not proven as sought to be done hereinabove, there would be no cause for striking her name from the muster roll. But if

the name was struck from the muster roll, then it could be done only in terms of rules governing retrenchment, which evidently too was not done.

9. In view of above facts, there is no reason to interfere in the impugned order.

10. The petition is without merit and is accordingly, dismissed.

FEBRUARY, 19, 2020

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NAJMI WAZIRI, J

