



2024:DHC:5000



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16th April, 2024

Pronounced on: 3rd July, 2024

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W.P.(C) 6926/2007

CEMENT CORP. OF INDIA LTD

..... Petitioner

Through: Mr.Ravi Sikri, Sr.Advocate with
Mr.Prakash Gautam, Mr.Deepank
Yadav, Ms.Kanak Grover &
Mr.Nachiket Chawla, Advocates

versus

PRAKASH VEER TOMAR & ORS

..... Respondents

Through: Mr.Sanjay, Advocate for R-1

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W.P.(C) 6954/2007

CEMENT CORPORATION OF INDIA LTD

..... Petitioner

Through: Mr.Ravi Sikri, Sr.Advocate with
Mr.Prakash Gautam, Mr.Deepank
Yadav, Ms.Kanak Grover &
Mr.Nachiket Chawla, Advocates

versus

B.K.SHUKLA & ORS.

..... Respondents

Through: Mr.Sanjay, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

Signature Not Verified

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By: DAMINI YADAV
Signing Date: 08.07.2024
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W.P. (C) No. 6926 of 2007 & 1 other connected matter

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CHANDRA DHARI SINGH, J

1. The instant batch of writ petitions has been filed on behalf of the petitioner under Article 226 read with Article 227 of the Constitution of India seeking the quashing of the impugned awards passed by Central Government Labour Court cum Industrial Tribunal *whilst* adjudicating upon the claim of regularisation of the respondent workmen. The learned Tribunal in the industrial award dated 18st October 2006 in I.D 56/ 2003 challenged by way writ petition bearing W.P.(C) 6926/2007, directed the petitioner to pay four years' wages as a retrenchment compensation and in the industrial award dated 1st December 2006 in I.D 52/ 2003 challenged by way writ petition bearing W.P.(C) 6954/2007 directed re-instatement of employees with 25% back-wages and gave the liberty to retrench the employees with four years' wages as a retrenchment compensation.

2. The common issue which falls for adjudication in the instant batch of petitions is whether the learned Tribunal can transgress beyond the terms of reference which pertained to regularisation of the respondent workmen and adjudicate upon issues relating to retrenchment of workmen.

3. Since, the facts as well as the legal issues involved in the present batch of petitions are similar, therefore, this Court has culled out the facts and submissions out of the writ petition bearing W.P.(C) 6926/2007 titled '*Cement Corp. of India Ltd vs. Prakash Veer Tomar & Ors*' for the disposal of the present batch of petitions.

FACTUAL MATRIX

4. The relevant facts necessary for the adjudication of the instant writ



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petition are reproduced below:

- a) The petitioner/Cement Corporation of India Ltd is a government - owned company engaged in the manufacturing and production of Cement. The respondents are workmen who worked at the petitioner's Delhi Cement Grinding (hereinafter “DGU”) unit on an ad -hoc basis.
- b) The petitioner was declared as ‘Sick’ unit under Section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter “SICA”) on 8th August 1996 by the Board for Industrial and Financial Reconstruction (hereinafter “BIFR”) due to its the deteriorating financial condition and it became non-operational w.e.f. 9th February, 1999
- c) On 12th June 1998, BIFR imposed a ban on further employment at all the sick units of the petitioner.
- d) The respondents approached this Court by way of filing the writ petition WP (C) No. 5026 of 1999 seeking regularisation wherein, the Coordinate Bench of this Court, *vide* an order dated 18th December 2001, dismissed the petition as not maintainable and directed the respondents to seek remedy under the Industrial Disputes Act, 1947 (hereinafter “Act”).
- e) Accordingly, the respondents approached the Appropriate Government and the parties were referred to conciliation. Upon the failure of the conciliation proceedings, the Appropriate Government, *vide* its reference order dated 1st April 2003, referred the dispute for adjudication to Central Government Industrial Tribunal cum Labour Court, New Delhi. The specific term of the reference was as follows:



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“Whether the demand of the CCI/DGU Workers Union in relation to regularisation of the services of Ex-Temporary Clerks, namely S/Sh. Prakash Veer Tomar, Raj Singh Chaprana, Raj Kumar Tomar, Taj Kumar, Eknath Singh, S.N. Pathak and Rajinder Kumar who worked in the Delhi Cement grinding unit of Cement Corporation of India, Okhla Industrial Area, New Delhi since July 1991 is just, fair and legal? If yes, what relief workmen are entitled to and from what date?”

f) During the pendency of industrial dispute, on 6th September 2003, the respondents moved a memorandum before the petitioner seeking to terminate their relationship with the petitioner and requesting for compensation under Voluntary Retirement Scheme at par with the regular employees.

g) The learned Tribunal, *vide* the impugned award dated 18th October, 2006 held that the respondents cannot be regularised due to closure of the unit and there was no work left with the petitioner, however, due to the fact that the respondents were engaged for a long time period, the respondents are entitled to four-year wages as retrenchment compensation.

h) Aggrieved by the impugned award, the learned Tribunal filed the instant petition.

PLEADINGS BEFORE THIS COURT

5. The petitioner has challenged the impugned award on the following grounds:

“GROUNDS



(i) *Because the impugned award is ultra vires the jurisdiction of the Tribunal and thus the same is liable to be set aside.*

(ii) *Because a Tribunal established under Industrial Disputes Act, 1947 is a creature of the Statute and cannot act in excess of the jurisdiction conferred by its parent statute.*

(iii) *Because under section 10 of the Industrial Disputes Act, 1947, the Tribunal has to confine its award to the issues referred to it and cannot adjudicate controversy which is wholly alien to the reference. In this case, the learned Tribunal has proceeded to pass an award which has no connection with the dispute referred to it namely regularization of the respondents.*

(iv) *Because a bare perusal of the terms of reference would show that dispute which had been referred to the learned Tribunal was in respect to absorption/regularization of the services of the claimants who were working as temporary employees at DGU, a factory owned by the petitioner management. No reference had been made about the conditions, which require to be fulfilled for termination of services of the respondent.*

(v) *Because the learned Tribunal in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in Secretary of State Vs. Uma Devi (III) [2006 SSC (L&S) 753], held that the question of regularization of the respondent workmen would not arise but clearly erred and exceeded its jurisdiction when it laid down as a precondition that the respondents should be paid retrenchment compensation at the time of retrenchment equivalent to four years wages calculated at the rate of prorated wages of 2005. (*

vi) *Because even otherwise, a tribunal can have no jurisdiction to lay down any such condition. Conditions precedent for retrenchment of workmen is given in Section 25-F of the Industrial Dispute Act, 1947. the right of the workmen and the correlative obligation of the management for retrenchment compensation is limited to notice period of one month or salary*



in lieu thereof and in addition an amount equivalent to 15 days pay for every completed year of service. As per the own showing of the respondents, they had joined the petitioner management between the years 1990- 1996. Thus even as per their best case, they would be entitled to retrenchment compensation equivalent to 6 to 8 months of salary at the time of retrenchment by way of compensation if the retrenchment was to take place at this stage. In order to get retrenchment compensation equivalent to four years wages at the rate of last drawn wages, each of the claimants is required to work for 96 years (ninety six years).

(vii) Because the learned Tribunal, which is a creature of a statute, can have no jurisdiction to amend its parent statute. The learned tribunal has not given any reason, justification or precedent for laying down such a strange condition. It is respectfully submitted that the direction of the learned Tribunal on this aspect again ex-facie erroneous and is liable to be set aside.

(viii) Because the petitioner management has no capability to take any further financial burden and the condition would only be a loss to the government exchequer without any corresponding benefit to the public at large. Moreover, since the petitioner is a sick company, the proceedings were liable to be stayed till the claimants obtained requisite permission from the BIFR.

(ix) Because the respondents do not fulfill the qualifications requisite for the claimed posts. These qualifications have been laid down by petitioners corporation in its Recruitment Policy for uniformity of service condition etc. Some of these posts require minimum job specifications like typing speed, experience and educational qualifications, which the respondents did not possess.

(x) Because the alleged CCI/DGU Workers Union i.e. Claimant Union has moved a memorandum dated 6th September 2003 before the petitioner seeking severance of the alleged



relationship with the management by getting compensation at par with YRS in vogue with employees of CCI Ltd. Thereafter, the alleged Union moved the Labour Department of the Central Government for this purpose. In the said application, the respondents stated that they are not interested in working with the management. Once the respondents themselves were seeking severance of the alleged relationship with the replying management, no question of any relief arose.

(xi) Because a dispute which does not relate to termination of services of workmen require espousal in order to become an industrial disputes. Such espousal must be by a substantial number of workmen working with that management or a trade union having representative character qua that management. Since in the present case, there was no such espousal of the dispute referred to the Tribunal, the Tribunal erred in law in adjudicating the reference.

(xii) Because in any event, the Tribunal was under an obligation to adjudicate on these aspects.

(xiii) Because the learned Tribunal also erred in presuming that the management had admitted that it had regularized the services of four persons, namely, S/Shri A.K. Yadav, P.K. Jain, D.K. Srivastawa and Arvind Singh in the year 2002. The learned Tribunal also erred in presuming that these persons were junior to the respondents. The management had submitted that these persons were the graduates' sales trainee (GSTs) candidates who had joined the petitioners as trainees long before 2002 and they were absorbed on completion of the training. Moreover the respondent cannot seek any parity with the respondents.

(xiv) Because Delhi Cement Grinding Unit is not doing any production since 9th Feb. 1999 wherein the claimants were working as adhoc employees.

(xv) Because as there had been no production or work at all at the Delhi Cement Grinding Unit since 9th Feb. 1999, the respondents and other employees of the contractor used to



come to the premises of the factory but were sitting idle without doing any work. Since there was no production, there were no resources with the petitioner management for continuing to pay the amount to the contractor for providing the services....”

6. The respondent workmen filed their counter affidavit opposing the instant petition on following grounds:

“4. That the respondents / workmens had been continuously working from their respective date of joining with artificial break and they are being treated as daily wages, Adhoc/ temporary workers by the management with an intention to deprive them of their rights to get the same scale of pay, wage and other employment which are being to the regular and permanent employees discharging the same and similar duties. More over it is pertinent to mention here that all the above respondents are being engage by the management /petitioner from the last 10to18 year and have being continuously working with the management and are permanently required by the management/Petitioner but to deprive the various facilities and benefit being paid to the regular employees the management/Petitioner treat the answering respondents as temporary workers.

5. That the answering respondents/workmen's join the service of the management/Petitioner in the year 1990,1991,1992,&1996 as clears, courier, messenger etc in the Delhi Grinding Unit of the management corporation. They were to provide all the service to the management and were transferred from one department to another on the basis of the exigencies of work.

6. The workmen/ answering respondents are discharging the work of a permanent and perennial nature which is primary essential for the management to continue its activities. The contribution to provided fund account etc and bonus are directly made by the corporation.' The action of the



management amount to Unfair Labour practice as has envisaged in the ID Act 1947, Schedule V enacted under section 2(r)(a) of the ID Act 1947. the clause 10 of the schedule V read as under:-

" 10. to employ workmen as "Badlis " "Casuals" or Temporary" and to continued them as such for years, with, the object of depriving them of the status and privileges of permanent workers."

7. That the workmen are being deprive of their legal right to get the same scale of the pay and other benefit which have been given to the regular employees employed by the management. 8. That when inspite of lapse of substantial period the service of the answering respondents were not regularised being aggrieved of the same, the answering respondents filed a writ petition in the High Court of Delhi vide no CWP No 5026 of 1999, the same was dismissed and answering respondents preferred LP A vide no.24/2002 which was later withdrawn with a liberty to prefer a review before the single judge, the Hon'ble Court after hearing the parties the answering respondents to approached the appropriate authority provided under ID Act , 1947 . “

7. The respondent has filed an additional affidavit on the following grounds:

2. That vide order dated 3rd May , 2006, the Board of Industrial & Financial Reconstruction (BIFR) had approved the rehabilitation scheme which inter-alia envisaged closure of Delhi Grinding Unit, wherein the respondents were working as contract employees. The appeal against the order of BIFR was dismissed by the Appellate Authority of Industrial & Financial Reconstruction (AAIFR) vide order dated 17.11.2006. The writ petition against the order of AAIFR was dismissed by the Division Bench of this Hon'ble Court vide judgment dated 11.01.2008 and the Special Leave Petition of the Division Bench of this Hon'ble Court was dismissed by the Hon'ble Supreme Court vide order dated 28.4.2008.



3. That thereafter the application filed by the petitioner before the Government of India, Ministry of Labour & Employment for permission to close down the Delhi Grinding Unit under section 25-0 of the ID Act was granted by the Government vide order dated 14th July, 2008. Thereafter the petitioner management closed down the Delhi Grinding Unit w.e.f 31st October, 2008. Thus, it is respectfully submitted that as on date, there is no Delhi Grinding Unit in existence wherein the respondents were working. The same has been closed after due permissions from the Central Government under Section 25- O of the Industrial Disputes Act. All workmen working at DGU are no longer in the employment of CCI Ltd.

8. The petitioner and respondent have eventually filed their written submissions.

SUBMISSIONS

(On behalf of the petitioner)

9. Learned senior counsel for the petitioner submitted that the learned Industrial Tribunal has exceeded its jurisdiction in passing the impugned award. It is submitted that the learned Industrial Tribunal has gone beyond the terms of reference and adjudicated upon the issue which was not a part of the reference since as per the terms of the reference, the only question which was referred to the learned Industrial Tribunal was regarding the regularisation of the respondents. However, it went beyond the terms of reference and decided on the quantum of retrenchment compensation payable to the respondents if they are eventually retrenched. This decision on retrenchment compensation was not within the scope of the reference made to the learned Industrial Tribunal and, is therefore, beyond its



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jurisdiction.

10. It is further submitted that the issue of retrenchment compensation is not incidental to the issue of regularisation, hence, it could not have been adjudicated in absence of a specific reference, and therefore, the learned tribunal has acted in contravention of Section 10 of the Act.

11. It is contended that Section 10 of the Act, stipulates that it shall confine its award to the issues referred to it and it shall not travel beyond the terms of the reference, therefore, by adjudicating upon the issue of retrenchment compensation, the learned Tribunal acted in violation of the provision of the Act.

12. It is submitted that the learned Tribunal has acted contrary to Section 25-F of the Act by directing the petitioner to pay four-year wages as compensation as a pre-condition to respondents' retrenchment.

13. It is further submitted that in terms of Section 25F(b) of the Act, a workman is to be paid 15 days' average pay as retrenchment compensation for every year of service completed in excess of 6 months. However, the learned Tribunal has completely ignored the said provision and has awarded retrenchment compensation in much excess to what the respondents are actually entitled to under the Act.

14. It is submitted that the compensation awarded by the learned Tribunal exceeds the limits prescribed under Section 25-F of the Act since as per the aforesaid provision, there is a statutory framework for determining the amount of compensation payable to workers in the event of retrenchment, and the same is based on their duration of continuous service. However, the



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learned Tribunal's award goes beyond the aforesaid statutory limits by awarding four years' wages as retrenchment compensation.

15. It is further submitted that the learned Tribunal failed to consider that even as per their own case, respondents No. 1 and 5 were in service only from 1990, therefore, even on the date of the award, they would have been entitled to merely 8 months average pay in terms of Section 25-F of the Act.

16. It is contended that the learned Tribunal, being a creature of the statute cannot award compensation in excess of its parent statute and the learned tribunal did not provide any reasons for arriving at that particular finding.

17. In light of the foregoing submissions, learned senior counsel for the petitioner submitted that the impugned award is afflicted with several illegalities and is liable to be set aside, and the instant petition should be allowed.

(on behalf of the respondent)

18. *Per Contra*, the learned counsel appearing on behalf of respondents submitted that the impugned award does not suffer from any illegality which merits interference of this Court.

19. It is submitted that the learned Tribunal did not venture outside the terms of reference and has rightly awarded retrenchment compensation to the respondent.

20. It is contended that the respondents were working for the petitioner's unit for a substantial period of time and were discharging work of permanent



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and perennial nature, therefore, they were entitled to regularization.

21. It is submitted that petitioner were wrongly denying regularization to the respondents citing financial difficulties, whereas on the other hand, they were directly recruiting other employees for the positions which were junior to the respondents.

22. It is submitted that the petitioner adopted “unfair labour practice” as defined under Schedule V (Clause 10) read with Section 2(r)(a) of the Act by depriving the respondents of their right to seek regularization.

23. It is submitted that there is no infirmity in the impugned award as it awarded four-year wages as compensation since the petitioner had also formulated a Voluntarily Retirement Scheme, wherein it was offering 60 months’ wages to its regular employees.

24. In view of the foregoing submissions, it is submitted that there is no error in the impugned award, therefore, the instant petition is liable to be dismissed.

ANALYSIS AND FINDINGS

25. Heard the learned counsel for the parties at length and perused the records relied upon by the counsel to substantiate their respective submissions.

26. It is the case of the petitioner that the impugned award is bad in law since the learned Tribunal went beyond the reference in deciding the issue which was never submitted to it and awarded retrenchment compensation over and above what is payable under Section 25-F of the Act. Therefore, it



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is contended that the issue of 'retrenchment compensation' is not incidental to the issue of 'regularization', therefore, the learned tribunal could not have adjudicated upon it.

27. In rival submission, the learned counsel for the respondent workmen have vehemently opposed the contentions advanced by the petitioner submitting to the effect that the learned Tribunal rightly awarded retrenchment compensation after as the respondents were engaged by the petitioner for a substantial period and discharged work of permanent nature.

28. The issue which falls for adjudication before this Court is whether the learned Tribunal went beyond the terms of reference in adjudicating upon retrenchment compensation or not.

29. At this juncture, this Court deems it appropriate to refer to the jurisprudential aspect pertaining to limited powers of the Industrial Tribunal in adjudicating within the ambit of the terms of reference and it cannot transgress beyond the same in granting relief.

30. Industrial Tribunal is a creation of a statute and the basis of its jurisdictions is the reference made to it by the Appropriate Government. The Tribunal has the limited role to adjudicate upon the issues or issues which are incidental to terms of reference. It shall confine itself to the issues specifically referred to it and not venture outside the terms of the reference. The Industrial Tribunal are quasi-judicial in nature and does not have any inherent power to adjudicate on any of the disputes raised by the parties. It is bound to adjudicate upon disputes within the limits imposed upon it by the Act and has to act according to its provisions.



31. As stipulated under Section 10 (1) of the Act, the 'appropriate government' has specified the issues for adjudication by the Tribunal. The Industrial Tribunal is bound to confine the adjudication to those points and matters incidental thereto.

32. Moreover as per Section 10(4) of the Act casts an obligation on the Industrial Tribunal to confine its adjudication to the terms of the reference or to any matter incidental thereto. The relevant portion of the Act has been reproduced herein under:

“[(4) Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, [the Labour Court or the Tribunal or the National Tribunal, as the case may be], shall confine its adjudication to those points and matters incidental thereto.”

33. After analyzing the statutory framework, this Court deems it imperative to analyze the reference order and the findings of the impugned award and ascertain the reasoning afforded by the learned Tribunal.

34. At this stage, this Court finds it imperative to refer to the decision of the Supreme Court in ***Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd.***¹ wherein it held that an Industrial Tribunal derives its jurisdiction from the terms of reference and it cannot go beyond those terms. The Hon’ble Court held that when the terms of reference were confined to adjudication on the validity of the closure of the industrial unit, the tribunal could not

¹ (1979) 3 SCC 762



adjudicate on the issue whether there was any closure at all. The relevant extract of the judgment is reproduced herein below:

*“11. Having heard a closely thought-out argument made by Mr Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. **The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management.**”*

35. Similarly, in *State Bank of Bikaner & Jaipur v. Om Prakash Sharma*², the Hon'ble Supreme held that in cases where the Labour Court exceeds the terms of reference, the award is deemed to suffer from lack of jurisdiction. Specifically, the Court held that when the scope of reference is limited to determining whether there was a violation of Section 25H or not, and the tribunal concludes that there was no such violation, it cannot then proceed to set aside the order of termination. The relevant paragraph is

² (2006) 5 SCC 123



reproduced hereunder:

“14. In the instant case, the award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the award, if the Labour Court exceeds its jurisdiction, the award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The award and the judgment of the High Court, therefore, cannot be sustained. Consequently, the appeal is allowed and the judgment of the High Court is set aside. The award is set aside to the extent of the order of reinstatement with back wages. The writ petition filed by the appellant in the High Court is, thus, allowed.

12. The specific issue which was, therefore, referred for determination by the Labour Court, related to the dispute as regards violation of Section 25-H of the Act. If the said provisions had not been found to be violated, the question of setting aside the order of termination by the Labour Court did not and could not arise. The learned Single Judge proceeded on the premise that the High Court, in exercise of its writ jurisdiction, cannot sit in appeal over the award of the Labour Court. The learned Single Judge was right, but then, only because the jurisdiction of the High Court, while exercising of its power of judicial review was limited, it would not mean that even a jurisdictional error could not have been corrected. The provisions of Articles 226 and 227 of the Constitution of India would be attracted if the inferior Tribunal has, inter alia, committed a jurisdictional error. What would be the ground for judicial review, in regard to the orders passed by an inferior Tribunal is no longer res integra.”



36. In *N.D.M.C v. Jai Ram*³, the Coordinate Bench of this Court held that issues of ‘regularization’ and ‘termination’ are not incidental to each other. The Court held that if the tribunal could not have decided and awarded the relief of ‘regularization’ when the scope of reference as well the prayer of a party was limited to the relief of ‘reinstatement’. The findings of the Court reads as under:

“8. After giving my due consideration to the rival submissions, I have come to the conclusion that as far as the relief of re-instatement in service granted to the workman by the Labour Court with 50% back wages is concerned, same does not call for any interference by this Court since there is no challenge made by the petitioner in that regard and it has been the petitioner's own case that it never wanted to discontinue the services of the respondent - workman as a muster roll employee. However, I am in full agreement with the submission of the learned counsel for the management that the Labour Court was not at all justified in giving the relief of regularization to the respondent - workman since that was not the dispute referred to it by the appropriate Government and, in fact, in the claim statement even the workman himself had not made any prayer for grant of relief of regularization to him. It is now well settled that the Industrial Tribunal or the Labour Court cannot travel beyond the terms of reference and give any relief to the workman. It has to confine the adjudication to the point(s) referred to it for adjudication or any matter incidental thereto. In the present case, as per the respondent's own case his services had been terminated and so he was entitled to be reinstated in service. Therefore, unless he was in service there was no occasion for any authority to direct his regularization and that matter cannot be said to be

³ 2012 SCC OnLine Del 148



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in any way incidental to the dispute raised by the respondent - workman regarding termination of his services by the petitioner – management...”

37. In view of aforesaid judgments, it is a settled principle of law that an Industrial Tribunal is strictly governed by the terms of its reference and can only adjudicate on matters explicitly referred to it or incidental to the reference. Any decision or adjudication that goes beyond the scope of the reference would be considered a jurisdictional error in the award passed by the Industrial Tribunal.

38. Now adverting to the merits of the instant petition, the relevant paragraph of the reference order is reproduced herein below:

“Whether the demand of the CCI/DGU Workers Union in relation to regularisation of the services of Ex-Temporary Clerks, namely S/Sh. Prakash Veer Tomar, Raj Singh Chaprana, Raj Kumar Tomar, Taj Kumar, Eknath Singh, S.N. Pathak and Rajinder Kumar who worked in the Delhi Cement grinding unit of Cement Corporation of India, Okhla Industrial Area, New Delhi since July 1991 is just, fair and legal? If yes, what relief workmen are entitled to and from what date?”

39. Upon perusal of the terms of reference, it is crystal clear that terms of reference pertained to adjudicating upon the issue of regularisation of the petitioner’s employees i.e., the respondent from July 1991. The order did not encompass any reference for adjudication on the issue of retrenchment compensation. This limitation underscores the narrow purview within which the Industrial Tribunal was expected to operate.

40. Now this Court will advert to the impugned award and the relevant



extract of the said award is reproduced herein below:

“The workmen have not been taken through regular recruitment procedure. They are purely ad-hoc and temporary and they have been continued after artificial breaks. Their work is continuous as artificial breaks are due to no fault of the workmen.

The work is no longer of continuous and regular nature. There is ban for further recruitment but these workmen are not precluded from engagement on the basis of further ban. The DGU is in precarious financial position. The management has applied for permission to close down the industry before the competent authority. The management is facing financial burden due to resource crunch. It is admitted that there is no production of Cement after 1999. It is also admitted that these workmen have been continued in view of the orders of the Courts from 1999 till date.

In Uma Devi's case the Constitution Bench has categorically laid down that in case workmen have been working continuously for 10 years and not on the basis of orders of Courts, their cases may be considered for regularization. In the instant case the unit was declared sick in 1999. These workmen have been continued in view of stay orders. The workmen themselves have moved application for getting compensation at par with VRS invoked with employees of CCI Limited. So the claimants are seeking severance of relationship for getting VRS. There is indeed no work for the claimants.

The present proceedings are not without jurisdiction. The claimants have been taken on adhoc basis but they have been continued for a long period. They have become over age. Their services cannot be regularized in view of the Uma Devi's case. They have rendered services for a substantial period and they have become over age. They cannot be given pay at par with



regular employees as there is no accountability and responsibility on adhoc and temporary employees. So they cannot be given status of regular employees. They are not entitled to get equal pay for equal work.

The management has continued them for long 6 years period of time. They are entitled to get compensation of four years wages in view of their long tenure of service in case the management finds their retrenchment necessary. The wages are to be calculated prorata wages of 2005

The workmen themselves have admitted that there is no work in Delhi Unit. They have been engaged for only Delhi Unit on adhoc basis So they cannot be transferred to the other units as regular employees.

In view of the facts and circumstances of the case all the workmen are entitled for compensation equal to four years wages in case of retrenchment compensation

The management is directed to make payment of four years wages by way of compensation at the time of retrenchment of these employees”

41. Upon meticulous examination of the impugned award, it can be ascertained that the learned Tribunal held that since the respondents have been working for a substantial period of time due to the stay orders of the Court, therefore, the case of the respondent workmen could not be considered for regularization and the workman cannot be paid at par with the regular employees in the petitioner entity.

42. It further held that since the respondent workmen have worked for a period of 6 years’, they are entitled for compensation of 4 years’ wages in



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case the petitioner deems it fit to retrench the respondent workmen.

43. The learned Tribunal further observed that since it is an admitted position on facts that the respondent workmen were engaged to work in the petitioner's Delhi unit on *ad-hoc* basis and there is no work in the Delhi unit. Therefore, the respondent workmen are entitled to compensation equal to four years wages in case of retrenchment compensation and, accordingly, the petitioner management directed to make payment for the same to the respondent workmen.

44. In the impugned award, it is evident that the Industrial Tribunal exceeded the bounds of its jurisdiction by awarding retrenchment compensation. The learned Tribunal's mandate was specifically limited to adjudicating the demand for regularization made by the Respondents. However, it ventured into deciding retrenchment compensation also, a matter that was beyond the scope of the reference. This overreach by the Tribunal represents a clear violation of its prescribed jurisdiction.

45. This Court is of the view that the issues of regularisation and retrenchment compensation are distinct and not inter-twined or incidental to each other. The right of a workman to seek regularisation pertains to the duration of their employment, allowing them to transition from a temporary or contractual role to a permanent position based on specific criteria or conditions. Conversely, retrenchment compensation comes into effect when an employer terminates a workman's services. It serves as a form of financial assistance to mitigate the economic impact of abrupt job loss.

46. Therefore, the issue of regularisation concerns the status of



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employment and can be pursued during the tenure of employment, whereas retrenchment compensation is a consequence of termination and is relevant only after the termination has occurred. These issues operate distinctly and at different stages of a workman's employment.

47. As per the terms of the reference, the learned Tribunal was bound to restrict itself to adjudication on the validity of the claim for regularization. It can assess on the aspect- whether the workman meets the criteria for regularization as per the applicable laws, employment contract, or any relevant agreements or policies.

48. The Tribunal's mandate in such cases does not extend to deciding on the issue of retrenchment compensation. Retrenchment compensation is a separate matter that falls within the jurisdiction of the tribunal only when the termination of services has occurred, and a claim for retrenchment compensation is made by the workman. A tribunal deciding an issue not referred to it would be exceeding its jurisdiction and such an action would be in teeth of Section 10(4) of the Act which mandates the tribunal to confine its adjudication to the issues referred to it.

49. The petitioner's contention that the reference concluded when the Tribunal determined that the Respondents could not be regularized is well-founded. Once the Tribunal made its decision regarding regularization, which was the primary issue referred to it, there was no further requirement for adjudication on retrenchment compensation.

50. The Tribunal's jurisdiction was tied to the scope of the reference, and its authority ceased once it reached a determination on the regularization



issue. Any additional adjudication beyond this point would be superfluous and contrary to the established principles governing Industrial Tribunal proceedings.

51. This Court further observes that the learned Tribunal has awarded compensation equivalent to four years' wages to the workman and the same is in contrast to the provisions outlined in Section 25-F of the Act, which stipulates that a compensation amount equivalent to 15 days' wages for every year of completed service shall be awarded as retrenchment compensation. In the impugned award, the learned Tribunal awarded wages of four years' which exceeds the amount of retrenchment compensation as prescribed under Section 25-F, hence, there is a deviation from the statutory guidelines.

52. Furthermore, the Tribunal's award lacks transparency and justification, as it fails to provide any reasoning or calculations to support the decision to award four years' wages as compensation. The absence of such details raises questions about the basis on which the learned Tribunal arrived at the quantum of retrenchment compensation.

53. In view of the aforesaid discussion, it is held that the learned Tribunal exceeded its jurisdiction by adjudicating on the issue of retrenchment compensation, which was beyond the scope of the reference and the learned Tribunal erred in awarding compensation in excess of what is prescribed under Section 25-F of the Act.

CONCLUSION

54. Industrial Tribunal is a creation of a statute and it gets jurisdiction on



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the basis of reference. It cannot go into the question on validity of the reference. The Tribunal's role is to adjudicate upon the matters specifically referred to it and does not possess the authority to decide on issues outside the scope of the reference. It must confine its adjudication to the terms of the reference and cannot expand or alter the scope of the dispute referred to it.

55. It is observed by this Court that the learned Tribunal has itself held that the Tribunal is transgressed the terms of the reference as per which the learned Tribunal had to adjudicate upon the issue of regularization of the respondent workmen while the learned Tribunal passed an award in favour of the workmen by awarding them retrenchment compensation. In the instant petition the learned Tribunal has wrongly transgressed the terms of reference and regularized the services of the respondent workmen.

56. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that the impugned Award suffers from patent illegality since the learned Tribunal went beyond the scope of the terms of reference and the same is an error apparent on the face of the record which is in contravention to the law settled by the Hon'ble Supreme Court as well as by this Court with regard to the jurisprudence of Labour Laws.

57. In view of the aforesaid observations, the impugned award dated 18th October 2006 passed by Central Government Labour Court cum Industrial Tribunal-II in ID No. 56/2003 is set aside.

58. Accordingly, the impugned awards in the batch of petition are set aside and the instant batch of petition is allowed along with the pending



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applications, if any.

59. In view of the aforesaid discussion, the instant batch of petition stands disposed of.

60. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 3, 2024
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