



2024:DHC:2846



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of order: 9th April, 2024

+ W.P.(C) 6676/2019 & CM APPL. 28170/2019

JAIMA MILLIA ISLAMIA Petitioner

Through: Mr. Prithvi Sabharwal, Standing
Counsel

versus

SH. VIKAS Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. Set aside the award dated 04.12.2018 passed by Presiding Officer, Industrial Tribunal-1, Dwarka Courts Complex, Delhi in I.D. No.129/2016;

B. Call for the records of the case.

C. Pass any other order(s) as may be deemed fit in the facts and circumstances of the case.”

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a) The petitioner i.e., Jamia Millia Islamia (“petitioner entity” hereinafter) vide a letter of appointment dated 9th May, 2009, appointed the respondent (“respondent workman” hereinafter) at the post of a ‘Sweeper/Safai Karamchari’ in their Sanitation Unit on



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compassionate grounds and subsequently on 15th May, 2009, the respondent workman after submitting the necessary documents and going through a medical examination, joined the services of the petitioner entity.

- b) As per pleadings, the petitioner entity alleges to have served two show-cause notices dated 10th February, 2011 and 23rd August, 2011 to the respondent workman, to which no reply was ever received. Consequently, the Vice-Chancellor of the petitioner entity *vide* order bearing No. F.No.3581(V)/RO/(Estt)/2011, dated 24th October, 2011, terminated the services of the respondent workman in terms of Ordinance VI Rule(6)(10)(2) and Clause 5 of the terms of appointment.
- c) Pursuant to which, the respondent workman being aggrieved by the order of termination, sought a mercy appeal which was examined by the Executive Council *vide* resolution No.EC-2011(IX): Reso-11, dated 28th November, 2011 wherein the said appeal was rejected on the account that the respondent workman's performance was found unsatisfactory during the probation period.
- d) Thereafter, being aggrieved by the aforementioned dismissal of the appeal, the respondent workman raised an industrial dispute before the appropriate government. The appropriate government *vide* letter bearing No. L-42011/60/2016 - IR(DU), dated 1st June, 2016, referred the industrial dispute between the petitioner entity and the respondent workman for adjudication to the learned Central Government



Industrial Tribunal-cum-Labour Court No 1, New Delhi (“CGIT” hereinafter) under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (“the Act” hereinafter), under the following terms of reference:

“Whether the services of the workman Shri Vikas s/o. Shri Diwan Chand have been terminated illegally and/or unjustifiably by the management and if so, what relief is the workman entitled to and what directions are necessary in this respect?”

e) The learned CGIT, after completion of pleadings, on 9th March, 2017 framed the following issues:

*“i) Whether management has illegally terminated services of the claimant as alleged?
(ii) Whether the claimant is entitled for reinstatement with full back wages as alleged?
(iii) Whether the claim is not legally maintainable in view of the various preliminary objections?”*

f) Thereafter, the learned CGIT *vide* the impugned Award dated 4th December, 2018, in ID. No.129/2016, decided the industrial dispute against the petitioner entity and in favour of the respondent workman thereby, holding that the respondent workman is entitled to 50% back wages and reinstatement with continuity of service.

g) Aggrieved by the aforementioned Award, the petitioner has preferred the instant writ petition under Articles 226 and 227 of the Constitution seeking to quash the impugned Award dated 4th December, 2018.



3. Learned counsel appearing on behalf of the petitioner entity submitted that the learned CGIT has erred in passing the impugned Award as the same has been passed without taking into consideration the entire facts and circumstances of the case.

4. It is submitted that the learned CGIT failed to consider the factum that the respondent workman had been working on probation and that his services had not been regularized and thus erred by observing that the respondent workman was entitled to reinstatement along with 50% back wages.

5. It is submitted that learned CGIT has wrongfully concluded that the services of the respondent workman were terminated illegally and no inquiry to such effect was conducted by the petitioner entity. However the respondent workman was served with various show-cause notices for repeatedly taking leave without prior approval and had been given ample opportunities to make out his case.

6. It is further submitted that the services of the respondent workman had been rightfully terminated by the petitioner entity on the ground that there was no reply filed to the show-cause notices served upon him therefore, as per the terms and conditions of the letter of appointment, the respondent workmen was paid salary for one month in lieu of the notice period.

7. It is submitted that it is a settled position of law that the employer is at liberty to terminate the services of a probationer on his performance being found unsatisfactory by the employer. To substantiate the same, learned



counsel for the petitioner has placed reliance upon a judgement in ***Progressive Education Society vs. Rajendra (2008) 3 SCC 310***.

8. It is contended that the findings of the learned CGIT pertaining to respondent's termination being illegal is perverse as it failed to consider the admission of guilt given by the respondent workman in the mercy appeal dated 31st October, 2011 which expressly states that the respondent workman accepts his mistake and apologises for the same.

9. It is submitted that learned CGIT has wrongfully considered the respondent workman as a regular employee since he was appointed as a temporary/probationary employee as enunciated in his letter of appointment. It is further submitted the respondent workman cannot be construed to have been regularised when he was still on probation. To substantiate the same, learned counsel for the petitioner has placed reliance upon the judgement given in case titled ***Indian Drugs & Pharmaceutical Ltd. vs. Workman (2007) 1 SCC 408*** which states that creation, abolition and regularization of/to a particular post are subject matters of executive function and the court cannot create a post where none exists.

10. It is further submitted that in the absence of any order of confirmation/regularisation of service, the learned CGIT, based on the office notice at Exhibit - MW/2 made by the supervisor, had wrongfully concluded that the respondent workman is a permanent employee.

11. It is submitted that mere continuance in services for a long period of time does not confer any right upon the respondent workman to be treated equivalent to a permanent employee. To substantiate the same, learned



counsel for the petitioner has placed reliance upon the judgement given by the Hon'ble Supreme Court in case titled ***Dayaram Dayal vs. State of M.P And Anr. (1997) Supp (3) SCR 624.***

12. It is further contended that learned CGIT erred in directing 50% back wages along with reinstatement as it is a settled position of law that reinstatement does not automatically entitle the employee for back wages. To substantiate the same, learned counsel for the petitioner has placed reliance upon the judgement given by the Hon'ble Supreme Court in case titled ***U.P Brassware vs. Uday Narayan Pandey AIR 2006 SC 586.***

13. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity prays that the instant petition may be allowed, and the relief as prayed, may be granted.

14. *Per Contra*, learned counsel appearing on behalf of respondents vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the same being devoid of any merit is liable to be dismissed.

15. It is submitted that as per the settled position of law, Award passed by the learned Labour Court cannot be interfered with under the writ jurisdiction unless the same suffers from any apparent error of jurisdiction, breach of principles of natural justice and/or is vitiated by a manifest error of law. To substantiate the same, learned counsel for the respondent has placed reliance upon the judgement of the Hon'ble Supreme Court in cases titled ***Sandhu Ram Vs. Delhi Transport Corporation 1983 (3) SCR 725*** and ***Harbans Lal vs. Jagmohan 1985 (4) SCC 333.***



16. It is submitted that the impugned Award has been passed by the learned Labour Court after duly considering the entire facts and circumstances available on record, and there is no illegality or infirmity thereto. Furthermore, it is submitted that the learned Labour Courts have applied its judicial mind in accordance with the settled position of law with regard to the issues raised in the present matter, hence, the instant petition is an appeal under the garb of a writ jurisdiction.

17. It is submitted that the learned CGIT has rightfully held that the services of the respondent workman were terminated illegally as the sanitary inspector i.e., the MW1, during his cross examination admitted that the services of the respondent workman have been terminated by the petitioner entity on 30th September, 2012, however neither any chargesheet was ever served upon him nor any inquiry was ever conducted by the petitioner entity.

18. It is further submitted that the findings of the learned CGIT are based on the evidence produced on record and the cross examination of witnesses. It is submitted that MW-2 during the cross examination admitted to the fact that the alleged memos issued to the respondent workman does not bear any acknowledgement by way of respondent's signatures and there is no proof of service produced to substantiate that the alleged memos were served upon the respondent.

19. It is submitted that the MW2, during his cross examination states that the respondent workman was paid salary for one month in lieu of notice period however, the same could not be substantiated by way of any evidence.



20. It is submitted that the letter of appointment dated 9th May, 2009 states that the period of probation shall be for a duration of one year hence, upon perusal of the office note dated 30th September, 2011 it can be deduced that the period of probation of the respondent workman concluded after a year thereafter, he was placed in the category of permanent *Safai Karamchari*.

21. It is submitted that the learned CGIT has rightfully concluded that the respondent workman holds a permanent post and that the services of the respondent workman had been illegally terminated by the petitioner entity as it is a settled position of law that an employee is deemed to have been confirmed wherein he has completed the maximum statutory period prescribed for probation. To substantiate the same, learned counsel for the respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in cases titled *Om Prakash Maurya vs. U.P. Cooperative Sugar Factories 1986 AIR 1844, 1986 SCR (3) 78* and *P.C. Bumotra vs. Chairman-cum-Managing Director, New India Assurance Co. Ltd. and Anr. AIR 1992 SC 947*.

22. It is submitted that it is a settled position of law that the burden of proof is upon the person who makes an averment. The petitioner entity had failed to adduce any evidence to substantiate its claim that the respondent workman was gainfully employed elsewhere hence, the burden of proof in the instant matter was upon the petitioner however, it failed to discharge the same before the learned CGIT.



23. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

24. Heard learned counsel appearing on behalf of the parties and perused the material on record including the pleadings, impugned Award and the judicial precedents cited.

25. It is the case of the petitioner entity that the services of the respondent workman had not been terminated illegally as he was working on probation, and it is settled position of law that the employer is at liberty to terminate the services of an employee on probation on the condition that his performance was found to be unsatisfactory. It has been further contended that continuance in services for a long period of time does not confer upon the respondent workman who is a probationer, a legal right to be treated equivalent to a permanent employee. Therefore, the impugned Award passed by the learned CGIT is perverse, illegal in the eyes of law and against the settled position of law.

26. In rival contentions, it has been submitted on behalf of the respondent workman that the Award impugned has been passed in accordance with the law and the respondent workman has substantiated its claims by placing sufficient evidence on record. It has been further contended that the instant petition is filed merely to harass the poor respondent workman as there exists very limited scope of intervention by the High Court under Article 226 i.e., the extraordinary writ jurisdiction.



27. The petitioner entity has approached this Court seeking to set aside the findings of the learned Labour Court as passed *vide* the impugned Award dated 4th December, 2018 therefore, before delving into the averments advanced by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Award dated 4th December, 2018 and ascertain the reasoning afforded by the learned CGIT. The relevant paragraphs of the impugned Award are reproduced herein below for reference:

“.....Issue No.1 to 3

9) All these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of.

10) It is clear from the pleading of the parties on record that the claimant/workman was appointed by the Management for the post of Sweeper. According to the workman/claimant, no appointment letter was issued & the Management terminated his services illegally on 30/9/2012, whereas contention of the Management is that the claimant/workman was appointed on compassionate grounds and in fact appointment letter dated 9/5/2009 (Ex.MW1/1) was issued wherein it has been stated that his services were on probation, for one year in the first instance. However. It is manifest from the office note dated 30/9/2011 (Annexure B colly, annexed with the written statement) that his probation period had already come to an end and he was placed as permanent, inasmuch therein his status has been described as Permanent Safaikaramchari. Thus, it stands proved on record that the claimant/workman was duly appointed by the Management as Sweeper/Safaikaramchari vide appointment letter Ex.MW1/1 and was subsequently made



permanent and as such, he was a regular employee of the Management.

11) Learned A/R for the Management strenuously argued that since services of the workman were terminated on 24/10/2011 by the Vice Chancellor of Management after giving him various opportunities to explain his unsatisfactory performance including habitual absentee and the appeal preferred by the workman was rejected by the Statutory Governing Body of the University on 23/12/2011, the present dispute having made through Union in August, 2015 is hopelessly barred by limitation and as such the same is liable to be rejected outrightly.

12) Per contra, learned A/R for the workman/claimant submitted that in fact the workman was terminated from service only on 30/9/2012 and the workman/claimant as per the version of the Management itself had approached the Conciliation Officer in August, 2015 and as such the claim having been made within three years from the date of the termination is well within time.

13) I may mention that though testimony of MW1 Shri Ayub Khan. Sanitary Inspector is in line with the allegations made in the written statement vis-a-vis date of termination of the workman herein, yet he admitted in his cross examination that claimant was terminated on 30/9/2012. No doubt MW 2 Syed Enayatullah Section Officer in the establishment of the Management has denied the suggestion that workman/claimant was terminated on 30/9/2012 & has clarified that date of termination is 24/10/2011, but he admitted that termination letter dated 24/10/2011 has not been filed on record. As such, there is no conclusive/documentary proof to show that services of the workman/claimant were terminated on 24/10/2011 or on 30/9/2012. Be that as it may. it will be suffice to say that



limitation period as three years from the date of discharge, dismissal, retrenchment or otherwise termination of the service of the workman, has been prescribed only for direct filing of the claim petition before the Court/Tribunal under Section 2-A of the Act. This is a reference made by the Appropriate Government under Section 10 of the Act. Once a reference has been made, this Tribunal is required to adjudicate the dispute between the parties and to decide the same. In these circumstances, this Tribunal is unable to accept the contention of the Management that the claim petition is not legally maintainable on this score.

14) Now the vital question for consideration before this Tribunal is whether services of the workman have been terminated in accordance with norms/law or in violation of the provisions of the Act.

15) The workman /claimant has deposed in his statement that during the course of employment, he did not give any chance of complaint to the Management and his service record was well satisfactory. The Management neither paid any over time wages to her, nor provided any legal facilities like ESI, PF, Bonus, Pay Slip, Leave with wages etc to him despite regular demands. The Management became annoyed & started to get rid of workman but failed and on 30/9/2012 the management illegally terminated his services without any rhyme or reason and without. At the time of termination, the Management has not paid service compensation to him and thus has violated the provisions of Section 25-F and 25-G of the Act. He clarified that he neither left the services, nor resigned from the services. In cross examination he admitted that his signatures appeared on four leave applications Ex.WWI/M-l (colly). He did not recollect the dates when he remained, on leave/unauthorized absence but denied the suggestion that he remained on leave without intimation/application on several dates viz. 3/12/2010,



8/12/2010 to 10/12/2010, 21st and 22nd December, 2010; ½ day on 23/12/2010 to 27/12/2010, 30/12/2010 to 7/1/2011, 12/1/2011, 10/8/2011 and on 8th, 13th, 15th, 19th and 29th September, 2011.

16) MW1 Ayub Khan and MW2 Syed Enayutullah stated in their depositions that the workman/claimant on unauthorized leave/absence from duty on aforesaid dates as mentioned in above para. According to them, the workman was a habitual absentee and various complaints were received against him and he was directed to improve his performance but he failed to do so. Copy of one such complaint dated 10/8/2011' has been filed on record as Ex.MW1/2, whereas copies of memos dated 10/2/2011 and 23/8/2011.) purportedly issued to the workman have been filed on record as Ex.MVV1/3 colly. MW2 Syed Enayutallah admitted in his cross examination that there is no signature of the. workman on these memos in token of acknowledgement of receipt of such memos and he did not produce on record any document about service of such memos.

17) They also deposed that the Management had never deprived the workman his legal rights and that management had no malafide intention against him about his termination. However, MW1 Ayub Khan showed his ignorance whether the claimant was paid any service compensation or notice pay before this termination by the Management. He also admitted that no charge sheet was served upon the claimant nor any enquiry was conducted against him. Though MW2 Syed Enayutallah Section Officer claimed that one month's wages was paid to the claimant in lieu of notice but he has not filed on record any such document to substantiate his claim in this respect. This witness also admitted that no charge sheet was served upon the claimant nor any enquiry was conducted against him.



18) *In view of the above it is crystal clear- that the workman/claimant was working on a regular basis as Safai Karamchari which job is of perennial nature. Admittedly, no charge sheet was served upon the claimant nor any enquiry was conducted against him prior to his termination. Further, the management has failed to prove that retrenchment benefits have been paid to the claimant at the time of his termination from services.' As such, there is violation of the provisions of Section 25-F of the Act.*

19) *There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management Bank to be illegal and void under the law.*

20) *Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice any compensation was paid to him, as such action, of the Management in terminating the services of the workman is held to be illegal and void.*

21) *Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. The workman/claimant has testified that after illegal termination, he searched for the job at many places but did not find any job and thus, he is completely unemployed and depended upon his parents. The Management has not adduced any evidence to show that the claimant is gainfully employed or earning his livelihood after the date of his termination.*



22) *The Hon'ble Apex Court in case "Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under:*

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then he has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages, he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

23. *The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section*



25F of the Act. Sometimes it has been termed as *ab initio*. void, sometimes as *illegal per se*, sometime as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of, retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action, of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer. Public Health Division No. 1 Panipat (2010) 5 SCC 497).

24) A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that[^] eventuality the workman is required to be reinstated, with full, back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

25) However, Hon'ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC /L&S) 716 observed as under

"8. There is no rule of thumb that in every case- where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire



*back wages should be awarded. A host of factors like the manner and. method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. **One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."***

26. Yet in another latest case of **Bholanath Lai and others Vs. Shree Orn Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held.as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural



justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

A similar view has been taken in the case of Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018 wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential



benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming defected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith. Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner.....”

27) Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal, particularly when the job is of regular and perennial nature, and the claimant/workman is not gainfully employed anywhere since after termination by the Management. Award is passed accordingly.”

28. Upon perusal of the aforementioned Award, it can be summarily stated that the learned CGIT has considered the entirety of the matter, the cross examination of witnesses as well as the evidence on record and reached to the conclusion that the respondent is entitled to 50% back wages



and reinstatement to service as he was illegally terminated by the petitioner entity.

29. The learned CGIT rendered a combined consideration on each of the three issues framed by it. The respondent workman claimed to have not been issued any letter of appointment at the time of joining and his services were terminated on 30th September, 2012 whereas the petitioner entity claims to have appointed the respondent workman on compassionate grounds, and the same is reflected in the terms of the appointment letter dated 9th May, 2009 (Ex.MW1/1). It is also contended that his services were on probation for one year in the first instance.

30. The learned CGIT taking note of Annex. B (Colly) annexed with the written statements, opined that the respondent workman was working in the permanent category as the above-mentioned document addressed under the seal of MW1 describes the respondent workman as '*permanent safaikaramchari*' thereby deducing that upon completion of the one year probation period, the respondent workman was employed as a permanent employee.

31. The learned CGIT further noted that during the cross examination the MW1 i.e., Shri Ayub Khan (Sanitary Inspector) admitted the date of termination as alleged by the respondent workman i.e., 30th September, 2012. On the contrary, the MW2 i.e., Syed Enayatullah (Section Officer) stated that the date of termination was 24th October, 2011, however admitted the fact that the alleged letter of termination dated 24th October, 2011 has not been placed on record. In light of the aforementioned discussion, the learned



CGIT observed that there is no documentary proof to conclusively ascertain a specific date of termination. Furthermore, the CGIT rejected the contention of limitation and noted that the present matter has been referred by the Appropriate Government under Section 10 of the I.D Act therefore, the CGIT is required to adjudicate upon the matter and the issue of limitation does not come into play.

32. The learned CGIT while deciding whether the services of the respondent workman were terminated illegally or not it held that it is an admitted fact by the MW2 that the memo placed on record does not bear any acknowledgement or receipt of the same and no evidence with regard to the service is placed on record. It is further admitted by both MW1 and MW2 during their cross examination that no chargesheet/inquiry was ever served/conducted by the petitioner entity against the respondent workman.

33. It is further admitted that salary in lieu of one month was paid to the respondent workman for the notice period, but no documentary evidence had been produced to substantiate the said claim. Thus, in view of the foregoing submissions during the cross examination and no documentary evidence to substantiate the asserted claims, the learned CGIT concluded that the respondent workman was working at a permanent post and the petitioner entity violated the provisions of Section 25-F of the I.D Act as no chargesheet/inquiry was ever conducted by it and failed to prove extension of retrenchment benefits to the respondent workman.

34. The learned CGIT further discussed the judicial dictum with regard to reinstatement and the quantum of back wages that may be directed and held



that the services of the respondent workman were terminated illegally. Accordingly the learned CGIT held that the respondent workmen entitled to reinstatement along with 50% back wages as he was not gainfully employed. To substantiate the same, learned CGIT placed reliance upon the judgement of the Hon'ble Supreme Court and this Court in cases of ***Delhi Jal Board Vs. Vimal Kumar*** (decided on 5-4-2018) MANU/de/1322/2018, ***Bholanath Lai and others Vs. Shree Orn Enterprises (P) Ltd.*** Manu/DE/1922/2018, ***General Manager Haryana Roadways Vs. Rudan Singh***, reported as 2005 SCC /L&S) 716, ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited*** (1979) 2 SCC 80 and ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidalaya*** (2013) 10 SCC 324.

35. At this juncture, this Court deems it apposite to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has adjudicated after having adjudicated on the merits of both fact and law as well as adduced the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not



allow the Court of review to examine the evidence with a view to form its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a lower court only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Court is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned Court. *Fifthly*, a High Court shall intervene with the order/award passed by a lower court if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

36. This Court is of the considered view that, the learned CGIT has dealt with each of the issues thereby, affording a detailed reasoning after having appraised the evidence placed on record, the cross examination as well as the settled position of law.

37. Thus, in view of the above discussions of law and fact, this Court observes that the learned CGIT after having perused the evidence of witnesses and their cross examination, has rightly arrived at the finding that the services of the respondent workman were terminated illegally. There is no evidence produced on record by the petitioner entity to support its averment that the said services were not terminated illegally as it is an admitted position by the AR for the petitioner entity that neither any chargesheet was served upon the respondent nor any inquiry was conducted



by the petitioner entity. Therefore, the respondent workman was not granted an opportunity to be heard before being terminated and the same cannot be construed otherwise.

38. This Court is further of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, this Court cannot undertake an exercise, which is beyond its jurisdiction by liberally re-appreciating the evidence and drawing conclusions based on pure questions of fact, as this Court is not sitting in an appellate jurisdiction over the impugned Award passed by the learned CGIT.

39. In light of the above, this Court concludes that the instant matter has been heard at length by the learned CGIT and the petitioner entity was granted sufficient opportunity to justify its averment that the services of the respondent workman were terminated legally and that he was gainfully employed however the findings of the facts by the learned CGIT narrated a completely different view than that alleged by the petitioner entity. Since no error on account of appraising evidence by the learned CGIT is noted by this Court, the relief as prayed by the petitioner entity cannot be granted.

40. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. This Court is of the considered view that the instant petition is an appeal under the garb of a writ petition and the petitioner is seeking a re-examination and judicial review of the evidence adduced before the learned CGIT despite the facts that there are no such special circumstances that require the interference of this Court.



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41. It is perceptible from the findings of the learned CGIT that it had gone into the depth of the material placed before it, therefore, this Court discerns no material to establish the proposition put forth by the petitioner entity. Therefore, it is held that there is no material to characterise the impugned Award as perverse and the learned CGIT is well justified in passing the same.

42. In view of the foregoing discussions, this Court finds no infirmity in the impugned Award dated 4th December, 2018, passed by the learned Central Government Industrial Tribunal-cum-Labour Court No 1, New Delhi in ID No.129/2016.

43. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 9, 2024
gs/da/db

Click here to check corrigendum, if any