IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI
LC No. - 409/2016

INDUSTRIAL DISPUTE BETWEEN :-

Mohd. Hameed s/o Sh. Dukhi Miyan,
Jhuggi No. 76/21, Near Fire station, Industrial Area,
Chuna Bhjatti, Kirti Nagar, New Delghi-110015 .....Workman

VERSUS

M/s A & B FASHIONS PVT. LTD.
84/2, W.H.S Kirti Nagar New Delhi-110015
(now at G-1, sector-1, NOIDA (UP) .....Management

Date of Institution : 23.01.2015
Date of Final Arguments :14.01.2020
Date of Award :30.06.2020

AWARD

1. The Workman has filed the present statement of claim under S.2-A of the Industrial Dispute Act. 1947, against the management-herein pursuant to the order No. ID/341/CO-I/14/WD/LAB/6944 dated 13.12.2014. The conciliation officer stated in thus in his "Failure Report" :

"Despite making several efforts the industrial dispute could not be resolved and therefore as per and therefore as per provisions of Section 2-A (1) and (2) of the Industrial Disputes act, 1947, the undersigned hereby issues his failure report, as the workman / representative requested for the same as he wants to file the matter directly before concerned Labour Court / Industrial Tribunal.

Therefore, you are hereby advised to file the claim / Industrial dispute to appropriate Labour court or tribunal which has power and jurisdiction upon dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

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2. The claimant-herein has filed the claim seeking reinstatement of service along-with consequential benefits stating that the workman-herein had been working as "Tailor Master" with the management as permanent employee since **01.04.2008** on the last drawn salary of Rs.8,883/- per month. The claimant-herein got leave from the management from **10.02.2014 to 28.2.2014** and had gone to his native place. However, the workman-herein became ill at his native place and came back to Delhi and after getting fitness certificate went to the management on **04.06.2014** to join the duty but the management refused to him back on work and thus terminated the services of the workman without any reason and without conducting any domestic enquiry. It is the case of the claimant-herein is that the management used to take 12 hr duty without paying the overtime at the prescribed double-rate. As per the claimant service record was maintained and not attendance card, salary slip were issued by the management. No Bonus / Minimum wages were given by the management. Only the facilities of PF and ESI were provided by the management.

3. The management has filed the Written Statement and denied the averments of the workman-herein and stated that the services of the workman-herein were not terminated, rather the workman-herein was **unauthorised absent from duty w.e.f. 10.02.214 and did not report for duty despite repeated letters dated 13.02.2014, 24.02.2014, 05.3.20143, 10.03.2014 and 20.05.2014 asking the workman-herein to join the duty but the workman did not respond.** The management thus drew a valid conclusion that the workman had abandoned his job. The management again wrote letters dated 14.06.2014 and 27.06.2014 by speed post asking the workman-herein to collect his amount towards settlement of account. According to the management no leave was sanctioned to the workman-herein.

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4. The issues were framed:

ISSUE No.1: Whether the workman remained unauthorisedly absent from his duty w.e.f. 10.02.2014 and did not report for duty despite repeated letters of the management asking him to join the duty and thereby himself abandoned his job, if so, its effect ? OPM

ISSUE No.2 : Whether the present claim has been filed by the workman without following the mandatory requisite of s.10 of the I.D. Act, if so, its effect? OPM

ISSUE No.3 : Whether the services of the workman were terminated by the management illegally and unjustifiably? OPW

ISSUER No.4: Whether the workan id entitled to the relief claimed in the statement of claim? OPW

ISSUE No.5: Relief

ISSUE No.2 : Whether the present claim has been filed by the workman without following the mandatory requisite of s.10 of the I.D. Act, if so, its effect? OPM

5. The perusal of the failure report (Ex.WW-1/1) it under S.2-A(1) & (2) of the I.D. Act stating that the management had not joined the proceedings before the Conciliation Officer despite various opportunities given. The said failure report dated 13.12.014 advised the claimant to file claim in the appropriate Labour Court.

6. For convenient reference Section 2-A I reproduced herein-below:-

S.2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. –

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[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)] Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

7. By Act 35 of 1965, Section 2A was added to the statute book. As its objects and reasons show, the provision was added because it was found that the individual workers had no right to seek a reference of their individual disputes pertaining to service. Section 2A therefore was added fiction was created by Section 2A for a limited purpose of treating 'individual dispute' as an 'industrial dispute'. As the objects and reasons suggest, Section 2A was amended to provide a direct access to the Court to the workman in case of a dispute relating to termination of service and also limitation for raising the dispute as industrial dispute.

8. It needs to be noted that Section 2A, read as the whole provides for a complete mechanism for redressing the grievance of workmen on termination of his service. It creates a fiction to treat an individual dispute as industrial dispute. Despite existence of Section 12 for conciliation, it provides separately for application to be made to the Conciliation Officer for conciliation of dispute. It further provides for direct application to the Labour Court for relief. It also provides that the Labour Court shall have the same power and jurisdiction to adjudicate in accordance with the provisions of the Act and all provisions of the

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Act shall apply to such adjudication. It is thus a complete code for adjudication of an individual dispute.

9. This ISSUE is thus decided in favour of the workman-herein and the management-herein.

ISSUE No.1: Whether the workman remained unauthorisedly absent from his duty w.e.f. 10.02.2014 and did not report for duty despite repeated letters of the management asking him to join the duty and thereby himself abandoned his job, if so, its effect ? OPM

ISSUE No.3 : Whether the services of the workman were terminated by the management illegally and unjustifiably? OPW

10. The management-herein has relied upon the various letters written by it to the workman

    a. **Ex.WW-1/M-1**: Letter dated 13.02.2014 its postal receipt is Ex. MW-1/10)

    b. **Ex.WW-1/M-2**: Letter dated 24.02.2014 its postal receipt is Ex. MW-1/11)

    c. **Ex.WW-1/M-3**: Letter dated 04.12.2014 its postal receipt is Ex. MW-1/13)

    d. **Ex.WW-1/M-4**: Letter dated 20.05.2014 its postal receipt is Ex. MW-1/9)

    e. **Ex.WW-1/M-5**: Letter dated 14.06.2014 its postal receipt is Ex. MW-1/8)

    f. **Ex.WW-1/M-6**: Letter dated 27.06.2014 its postal receipt is Ex. MW-1/7)

    g. **Ex.MW-1/12 :** Letter undelivered

    h. **Ex.MW-1/14 :** Letter undelivered

11. The cross-examination of MW-1 reveals:

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"....It is correct that no chargessheet, show cause notice, memo was given to the workman by the management in respect of his unauthorised absence from duty. It is correct that no domestic enquiry was conducted by the management against the workman in respect of the unauthorised absence from duty. The letters Ex.MW1/1 to MW-1/6 are written by one Bhuwan who is Accounts Assistant in the office of the management. I know the contents of letter MW-1/1 to Ex.MW-1/6. The name of the workman remained on the attendance register of the management till July 2014. As the workman could not produce any medical certificate in respect of his absence from February, 2014 to July, 2014 as such his service was terminated. I do not remember the exact date of the termination of the workman, however, it was in July 2014. No termination letter was issued by the management to the workman. The workman never returned back after July, 2014. No amount towards full and final settlement of the workman was sent by the management to the workman. (Vol. Although, the workman was voluntarily advised to receive the said amount).. It happened in the month of July, 2014. No written advise mentioning therein the amount of settlement was given by the management to the workman.....It is correct that workman had come to us on 04.06.2014 along with medical certificate, however, the certificate was not accepted since he was told to have the same verified from ESIC and come back. When he started abstaining from duty he had stated that he was going to get treatment from ESIC Hospital. He had not gone after getting any leave sanctioned..."

12. The cross-examination of the workman reveals:

"It is correct that w.e.f. 10.02.2014, I did not perform my duties. (Vol. Since I had gone on leave). I have no copy of the application for seeking leave. It is correct that I had not given any leave application to the management. I had

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asked for leave. I have no document to show that I had asked for leave or that any leave was sanctioned. It is correct that I had received letters dated 13.02.2014, 24.02.2014, 05.03.2014, 10.03.2014 and 20.05.2014 from the Management. It is correct that the photocopy of letter Ex.WW1/M-1 to M-7 (OSR) are the copies of the letter sent by the management to me. I had not given any reply to any of these letters. ...

13. The management witness MW-1 admitted in his cross-examination that the workman had come to us on 04.06.2014 along with medical certificate, however, the certificate was not accepted since he was told to have the same verified from ESIC and come back. When he started abstaining from duty he had stated that he was going to get treatment from ESIC Hospital. This admission on part of the management reiterates the version of the workman and brings out that the management was bona fide in is conduct. The management acted arbitrary in rejecting the medical documents of the workman-herein. The aspect of absence from duty involves certain duty on part of the employer. The Employees' State Insurance Scheme of India is a multi-dimensional Social Security Scheme tailored to provide Socio-economic protection to the 'employees' in the organized sector against the events of sickness, maternity, disablement and death due to employment injury and to provide medical care to the insured employees and their families. The scheme provides full medical care to the employee registered under the ESI Act, 1948 during the period of his incapacity, restoration of his health and working capacity. It provides financial assistance to compensate the loss of his/ her wages during the period of his abstention from work due to sickness, maternity and employment injury. The scheme provides medical care to his/her family members also. The ESI scheme is a self financing scheme. The ESI funds are primarily built out of contribution from employers and employees payable monthly at a fixed percentage of wages paid. The State Governments

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also bear 1/8th share of the cost of Medical Benefit. It is the statutory responsibility of the employer under Section 2A of the Act read with Regulation 10-B, to register their Factory/ Establishment under the ESI Act. As per **Employees' State Insurance (General) Regulations, 1950**

52A. Abstention verification

(1) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured person from work for which sickness benefit [22][* * *] or disablement benefit for temporary disablement, as provided under the Act has been claimed or paid, in Form No. 28 and within such time as the said office may in writing require in the said form.]

(2) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured woman from work for which maternity benefit as provided under the Act has been claimed or paid, in Form 28A and within such time as the said office may in writing require in the said form.]

14. The management-herein has not placed on record or even averred that the ESIC was intimated of the absence of the workman.

15. There is yet another aspect relating to the "Domestic Enquiry". The Division Bench of The Hon'ble Delhi Court in Shakuntala's Export House (P) Ltd Vs. Secretary (Labour) MANU/DE/0541/2005 has held that abandonment amounts to misconduct which requires proper inquiry. The judgment of the Single Judge was upheld by the Division Bench is reported as 117 (2005) DLT 479. To the same effect is another judgment in MCD Vs. Begh Raj 117(2005) DLT 438 laying down that if the workman had abandoned employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have been sustained.

16. In the context of Ex.WW1/M1 whereby the workman's services with the management were terminated there is not mention of initiation of any enquiry.

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The Hon'ble Supreme Court also in D.K. Yadav Vs J.M.A. Industries Ltd (1993) 3 SCC 259 has held that even where the standing orders of the employer provide for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. The same view was reiterated in Lakshmi Precision Screws Ltd. Vs. Ram Bahagat AIR 2002 SC 2914 (in this judgment Sakattar Singh mentioned below was distinguished). In V.C. Banaras Hindu University Vs. Shrikant AIR 2006 SC 2304 it was held that although laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of Constitution of India; if the action is found to be illogical in nature, the same cannot be sustained.

17. In M/s Fateh Chand vs Presiding Officer Labour Court & Anr. 2012 LLR 468 Delhi, our own the Hon'ble High Court observed that the management has to bring on record sufficient material to show that the employee has abandoned the service and abandonment cannot be attributed to the employee without there being sufficient evidence. On failure to report for duty, the management has to call upon the employee and if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management, no presumption against the respondent can be drawn. It was held to be a case of violation of Section 25F of the Act.

18. In MCD vs Sukhbir Singh 1994 ILR 332, in case of abandonment of service, it was held that the management was duty bound to conduct an inquiry. Reference in

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this regard may also be made to Shakuntala Export House (P) Ltd. vs P.O. Labour Court X & Anr. 117(2005) DLT 479.

19. In the case of Shiv Dayal Soin and Sons vs,. The Presiding Officer, Labour Court in LPA 801/2002 decided on 20.12.2007, the Division Bench of the Hon'ble Delhi High Court has held in para 11 thereof which is as follows:-

"However, it is pertinent to note that a mere accusation that the Workers had abandoned their jobs is not enough to accept the said imputation, degree of proof required to establish abandonment of service, is rather strict and the management in this case has failed miserably to discharge the said burden of proof..."

20. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibres of India Ltd., reported in (1979) 1 SCC 590 throws great deal of light on this aspect, The Court noted as under:

"5a. Re Question 1: In the Act, we do not find any definition of the expression 'abandonment of service.' In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the Dictionary of English Law by Earl Jowitt (1959 Edn.) 'abandonment' means 'relinquishment of an interest of claim'. According to Black's Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment.' It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining

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to the office must be with actual imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'."

21. In Shiv Dayal Soin and Sons (supra) also relied upon in Buckingham and Carnatic Co. vs. Venkatiah AIR 1964 SC 1272 it was observed :

"abandoning or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case".

22. In view of the above discussion and the facts of the present case it cannot be said that the workman abandoned his job with the management. The management-herein has not been able to discharge their onus to show that the workmen had abandoned the job by remaining absent. This issue is decided in favour of workman and against the management.

23. Therefore, in view of the aforesaid discussion the management has failed to prove that workman has abandoned the service as he voluntarily remained absent. **Issue is accordingly decided in favour of the claimant/workman and against the management.**

24. **Thus the issues No. 1 & 3 relating to the unauthorised absence and the legality of termination of service both are decided in favour of the workman and against the management.**

ISSUE No.4: Whether the workman is entitled to the relief? OPW

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ISSUE No.5: RELIEF

25. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.

26. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

27. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

28. The ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings :

- Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75;

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- Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422;
- General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591).

29. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

> *"33. 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) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *iii) 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 it 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 averments about its existence. It is always easier to prove a positive fact than to prove a negative fact."*

30. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down as under :-

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"In the very nature of things there cannot to a straightjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice? according to law and not humor. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharm v.Workfild).

31. In similar manner, the Hon'ble Supreme Court in Chairman-Cum-M.D Coal India Ltd and others Vs Ananta Saha & Ors reported in 2011 (5) SC 142 has held that the issue of entitlement of back wages has been considered by this Court time and again. It has been consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic.

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32. The workman-herein has stated in cross-examination:

"At present, I am living in Jahangir Puri. I do not know the address of my residence. I am presently working in Azadpur Mandi as a labour. My family lives in village. I owned 1-2 Kattas of land in village. My family does agricultural work on that land. I am earning Rs.250/- per day. I am not literate...

33. So far as the expression "gainful employment in an establishment" is concerned, it has been held by the courts that the self-employment too is not employment in an establishment. This question fell for consideration before the Apex Court in (1984) 4 SCC 635 entitled Rajinder Kumar Kundra Vs. Delhi Administration while considering the question relating to award of back wages, the court noticed thus:-

"It was next contended on behalf of the appellant that reinstatement with full back wages be awarded to him. Mr. P.K. Jain, learned counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross- examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father- in-law and that he had no alternative source of maintenance. ***If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment.*** *The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of*

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the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in- law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits."

(the emphasis is mine) (as quoted in para 16 of "Kishan Lal & Sons vs Govt. Of. Nct. Of Delhi & Ors." {WRIT PETITION (CIVIL) NO. 2211/1998 decided on 28 April, 2010})

34. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.

35. The ISSUES No.4 & 5 are also decided in favour of the workman and against the management-herein.

36. In view of the facts of the case and the case law(s) on the point, the present case the workman deserves to be reinstated with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. . 10.02.2014** till date and further as per the rule.

37. The management is directed to reinstate the workman-herein reinstated with full back wages alongwith the consequential relief as per the last drawn wages @ **Rs.8,918/-** per month (as admitted / averred by the management in paragraph no. 1 of the Written Statement under reply Para-wise) **w.e.f. 10.02.2014** till date and further as per the rule.

38. Matter / Reference answered accordingly. Disposed of.

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39. A copy of the award be uploaded on the website of RADC through Incharge Computer Branch. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

40. Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through VC from home office.

Dated:30-06-2020.

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT

ROUSE AVENUE COURTS , NEW DELHI

LC No-409/2016,

Mohd. Hameed Vs. M/s A B Fashion Pvt. Ltd.

ANNOUNCED THROUGH VIDEO CONFERENCING FROM HOME OFFICE.

30-06-2020

File taken up today as case is preponed from 13-07-2020 to today i.e. 30-06-2020 and the notices for the same have already been issued to ARW & ARM through whatsapp/VC/Electronic mode on their mobile number(s)/email IDs provided by them for pronouncement of final order in this case. The communication were also established with ARW/ARM through whatsapp/e-mail/VC on 19-06-2020 & 26-06-2020 for filing of written submission and fixing of this case for final order for today i.e. on 30-06-2020.

Present : Sh. Laxmi Chandra Advocate, AR of the workman through electronic mode i.e. VC, email ID (lcf223@gmail.com) & Mobile No:9871165156, who had already addressed final argument in court and had given consent to pass final order in this case.

Sh. Vinay Sabharwal, Advocate Authorized Representative of Management through electronic mode i.e. VC, email ID (sabharwalvinay0@gmail.com), Mobile No:9810080522, who had already filed his final written submission/Argument on the official e-mail ID of the court i.e. (reader polccourtroom no.308radc@gmail.com).

Vide my separate detailed order An Award is passed in favour of the workman and against the management. The management is directed to reinstate the workman-herein reinstated with full back wages alongwith the consequential relief as per the last drawn wages @ **Rs.8,918/-** per month (as admitted / averred by the management in paragraph no. 1 of the Written Statement under reply Para-wise) **w.e.f. 10.02.2014** till date and further as per the rule. File be consigned to record room.

Announced through VC from home office.

Dated:30-06-2020.

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI

LC No. - 2004/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Akhilesh Kumar S/o Sh. Kellu Prasad,
R/o Jhuggi No.726, Industrial area,
C 5/35, Kirti Nagar, New delhi-110015 .....Workman

VERSUS

M/s A & B FASHIONS PVT. LTD.
84/2, W.H.S Kirti Nagar New Delhi-110015
(now at G-1, sector-1, NOIDA (UP) .....Management

Date of Institution	**: 23.01.2015**
Date of Final Arguments	**:14.01.2020**
Date of Award	**:30.06.2020**

AWARD

1. The Workman has filed the present statement of claim under S.2-A of the Industrial Dispute Act. 1947, against the management-herein pursuant to the order No. ID/341/CO-I/14/WD/LAB/6944 dated 13.12.2014. The conciliation officer stated in thus in his "Failure Report" :

"Despite making several efforts the industrial dispute could not be resolved and therefore as per and therefore as per provisions of Section 2-A (1) and (2) of the Industrial Disputes act, 1947, the undersigned hereby issues his failure report, as the workman / representative requested for the same as he wants to file the matter directly before concerned Labour Court / Industrial Tribunal.

Therefore, you are hereby advised to file the claim / Industrial dispute to appropriate Labour court or tribunal which has power and jurisdiction upon dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

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2. The claimant-herein has filed the claim seeking reinstatement of service along-with consequential benefits stating that the workman-herein had been working as "Line Master" with the management as permanent employee since **03.01.2009** on the last drawn salary of Rs.9,020/- per month. It is the case of the claimant-herein is that the management had taken his signatures of blank papers and vouchers at the time of recruitment and used to take 12 hr duty without paying the overtime at the prescribed double-rate. As per the claimant service record was maintained and not attendance card, salary slip were issued by the management. No Bonus / Minimum wages were given by the management. Only the facilities of PF and ESI were provided by the management. As per the claim when the workman-herein sought legal facilities the management got annoyed and terminated the services of the workman-herein on **03.07.2014** without any reason and without conducting any domestic enquiry.

3. The management has filed the Written Statement and denied the averments of the workman-herein and stated that the services of the workman-herein were not terminated, rather the workman-herein expressed her desire to leave the job. The management accepted her resignation and kept her full & final settled amount ready but the work-man did not come to receive it. The letter dated 14.07.2014 was written by the management to the workman-herein so as to tell her to collect her settled amount but to no avail. **The management has asserted that the date of joining of the workman is 03.01.2011 and not 03.01.2009.** All the other averments of the workman-herein are denied by the management.

4. The following issues were framed:

   ISSUE No.1 : Whether the claimant joined the services of the management on 03.01.2011 and not on 03.01.2009 as alleged by the management, if so, its effect? OPM

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ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE No.3 : Whether the claim of the claimant is maintainable in the present form as the management has alleged that workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

ISSUE No.5: Whether the workman is entitled to the relief? OPW

ISSUE No.6: RELIEF

5. First of all the Issue No.3 shall be disposed of.

ISSUE No.3 : Whether the claim of the claimant is maintainable in the present form as the management has alleged that workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

6. The perusal of the failure report (Ex.WW-1/1) it under S.2-A(1) & (2) of the I.D. Act stating that the management had not joined the proceedings before the Conciliation Officer despite various opportunities given. The said failure report dated 13.12.014 advised the claimant to file claim in the appropriate Labour Court.

7. For convenient reference Section 2-A I reproduced herein-below:-

S.2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. –

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[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)] Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

8. By Act 35 of 1965, Section 2A was added to the statute book. As its objects and reasons show, the provision was added because it was found that the individual workers had no right to seek a reference of their individual disputes pertaining to service. Section 2A therefore was added fiction was created by Section 2A for a limited purpose of treating 'individual dispute' as an 'industrial dispute'. As the objects and reasons suggest, Section 2A was amended to provide a direct access to the Court to the workman in case of a dispute relating to termination of service and also limitation for raising the dispute as industrial dispute.

9. It needs to be noted that Section 2A, read as the whole provides for a complete mechanism for redressing the grievance of workmen on termination of his service. It creates a fiction to treat an individual dispute as industrial dispute. Despite existence of Section 12 for conciliation, it provides separately for application to be made to the Conciliation Officer for conciliation of dispute. It further provides for direct application to the Labour Court for relief. It also provides that the Labour Court shall have the same power and jurisdiction to adjudicate in accordance with the

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provisions of the Act and all provisions of the Act shall apply to such adjudication. It is thus a complete code for adjudication of an individual dispute.

10. This ISSUE is thus decided in favour of the workman-herein and the management-herein.

ISSUE No.1 : Whether the claimant joined the services of the management on 03.01.2011 and not on 03.01.2009 as alleged by the management, if so, its effect? OPM

ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

11. The management-herein has asserted that the date of joining of the workman-herein is **03.01.2011** and has proved the following documents:

i. **Ex. WW1/M1 (ESIC Temporary Identity Certificate)**

ii. **Ex.MW-1/1 (Appointment letter);**

iii. **Ex.MW-1/2 (application letter of workman-herein);**

iv. **Ex.MW-1/3 ESIC card copy);**

v. **Ex. MW-1/4 (probation letter);**

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12. In view of the documents placed on record by the management it is amply proved that the date of joining of the workman-herein is **03.01.2011** *(and not 03.01.2009)*. Thus this ISSUE is decided in favour of the management and against the workman-herein.

13. As far as the aspect of 'full and final settlement" is concerned the management-herein has relied upon the following documents regarding the settlement.

    i. **Ex.MW-1/7 (letter dated 14.07.2014 regarding full and final settlement of account etc.**

    ii. **Ex.MW-1/8 Postal receipt dated 14.07.2014)**

14. Cross-examination of MW-1 reveals :

".... All workers were told verbally that there was shortage of work, however, no written notice to that effect was displayed. This declaration was given to workman through their head. This announcement was made somewhere in the year 2014 approximately in the month of May-June 2014. The workman had orally told the management that he was not willing to continue because he was not keeping good health. No such mention has been made in my affidavit with regard to healthy of worker. ... They were all invited by the letter to come to the office and settle the account but they never came. The full and final account is not filed on judicial record, I have supplied the copies of the full and final accounts today itself to the AR of the workman. The letter dated 14.07.2014 referred to in my affidavit has not been filed in the court record, however, it is available in my office record..... It is correct that the worker had tendered his resignation. (vol It was based on illness of the worker). I have not placed the resignation letter on judicial record..... The factory had shifted from Kirti Nagar, Delhi to Noida, UP on 05.09.2015..."

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15. Full and final settlement is usually used by the employers to absolve themselves from all the previous dues and claims of their employees. It is usually actuated in the form of a settlement contract and effectively concludes the employer-employee relationship. Ideally such a settlement ought to serve its purpose and lead to the dissolution of all the pre-existing disputes and claims between the employer and employee. Sadly, that is not always the case. Employers usually get dragged into the labour courts for certain previous dues or claims which are claimed by the employees to be beyond the purview of the terms of settlement. The author proposes to analyze several judgments of courts to examine the legal position relating to such matters.

16. In P. Selvaraj v. The Management of Shardlow India (W.A.No.1478 of 2006), the Madras High Court was of the opinion that where a full and final settlement was a predicament whereby it was mandatory for an employee to sign it to get any amount, even if it was less than the sum he was entitled to, in those cases the full and final settlement will not stand, and the employee can claim the sum he was entitled to. It also asserted that an employee cannot be estopped from claiming the gratuity amount by virtue of section 14 of Payment of Gratuity Act, 1972, since it has an overriding effect over any other enactment or any instrument or contract.

17. A full and final settlement doesn't necessarily mean that the employer is exonerated from providing its employee all the benefits. The employer still has to pay the gratuity amount to its employees, which cannot be contracted out by it. It usually depends on the terms and conditions of the settlement agreement; all those pending disputes and claims, which are addressed within the said terms and conditions, will stand fully resolved and recovered.

18. To understand the word' full and final settlement', it is to be understood first that what amount may come or may be included in full and final settlement. As far as I.D

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Act is concerned, there is no definition of the phrase ' full and final settlement' but as far as various pronouncements are concerned, the word 'full and final settlement' would simply mean that it would include such an amount which if paid by the management and accepted and received by the workmen then thereafter there would be no claim either of the management upon the workmen or vice versa with respect to any monetary benefits qua the terms and nature of employment. Therefore, if a wider view is taken then it would include that all amount which the management paid to the workmen at the time of leaving/retiring/terminating the job i.e. their earned wages , leave encashment, bonus, amount of PF, amount towards gratuity if payable, retiral benefits and which may also include any other amount which the workmen owe to the management including the amount which the management has given to the workmen during its tenure by way of advancing loan or by way of any legal facility attached to the job entrusted to the workmen like accommodation or conveyance if any, or any other such benefit which the workmen have to return to the management at the time of such settlement & after adjusting all such benefits, the terms of full and final would be arrived at.

19. It is not possible to hold this issue in favour of the management because the witness who had witnessed the final payment is not examined. The settlement projected by the management is not in conformity with Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957. Therefore, the rulings urged by the workman would apply in this case and whereas the rulings relied on by the management on this aspect of resignation, do not attract to the present facts of the case.

Rule 58 in The Industrial Disputes (Central) Rules, 1957

Memorandum of settlement.—

(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.

(2) The settlement shall be signed by—

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(a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; 1[(b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at meeting of the workmen held for the purpose;] 2[(c) in the case of the workman in an industrial dispute under section 2A of the Act, by the workman concerned.] Explanation.—In this rule "officer" means any of the following officers, namely:—

(a) the President;

(b) the Vice-President;

(c) the Secretary (including the General Secretary);

(d) a Joint Secretary;

(e) any other officer of the trade union authorised in this behalf by the President and Secretary of Union.

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

20. The version of the management is that the workman on coming to know that the workman-herein had resigned due to ill-health is not proved by the management. There is no commination placed on record by the management either before or after shifting to NOIDA to show the directions / offer / intention etc. the workman to join at the shifted place at NOIDA. The management has also not produced any official communication to the Labour Department regarding the shifting of the premises to NOIDA. There is nothing on record to prove that any amount was paid or even

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intended to be paid by the management to the workman-herein. The management-herein has failed to prove that the workmen-herein had settled by way of amounts as "Full and final" settlement.

21. Thus the ISSUE regarding "full and final settlement is decided against the management and in favour of the workmen-herein.

22. As far as the termination from the service is concerned the workman-herein has stated in his cross-examination:

"Nobody in the management told me to go by way of termination of service. I last reported for my duty on 04-07-2014 thereafter I did not report for duty. Vol. As the management had refused me duty on 04.07.2014..."

23. It may be noted that the ID Act states that termination by way of retrenchment can be for any reason whatsoever. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. v. Sambu Nath Mukerji and others also followed this interpretation of the definition and held that even "striking off the name of the workman from the rolls" for being absent without leave is "retrenchment". Hence, the reasons of termination are not limited to any particular class of reasons, and need not be only on economic grounds such as redundancy, etc. Apart from the issue of definition, what is critical is that an employer must carry out retrenchment (other than dismissal on grounds of misconduct), as per the requirements of section 25F of the ID Act. This provision provides for the employer to fulfil certain conditions before retrenching any employee. The condition given under section 25F(c) states requires the employer to give notice to appropriate government in addition to the other two conditions. What is important to note is that the notice must state the reason for retrenchment of the employee and the notice must be issued as is prescribed in the rules framed under the Act.

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24. In the present case the management-herein has not followed any procedure. The management-herein has submitted written arguments thereby raising the following contentions:

    a. The pleadings of the claim are not specific and do not give the necessary details like mode of termination (verbal or written); authorised person who conveyed the termination; authority of the person who terminated the service; the circumstances under which the termination was made.

    b. No independent witness has been examined by the workman-herein;

    c. Self-serving claims are not enough proof of the case of the workman;

    d. The management-herein has examined MW to prove that the persons named by the workman-herein were not authorised by the management to terminate the services of the workman-herein;

    e. Informing the workman that there was shortage of work and making full and final payment does not amount to termination of the services;

    f. The management had made the offer to the workman to report to the duty at NOIDA (UP) premises;

    g. The management has sought directions to the workman to report to the duty at NOIDA (UP) premises.

    h. The contentions and the judgments relied upon by the management are to the effect when a workman has no oral /documentary evidence to back up the claim except the statement of the workman in the affidavit-of-evidence. However, that is not the case here. The workman-herein has relied upon substantial evidence.

25. Once the workman-herein discharges his / her primary onus it is for the management to disprove the version of the workman and also to adduce its own

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evidence. The management-herein has not been able to discharge its onus to prove its own case by cogent evidence.

26. The Issues No.2 & 4 are decided in favour of the workman and against the management.

ISSUE No.5: Whether the workman is entitled to the relief as stated in the statement of claim? OPW

ISSUE No.6: RELIEF

27. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.

28. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

29. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be

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put in the same position in which he would have been but for the illegal action taken by the employer."

- The ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings :
- Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75;
- Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422;
- General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591).

30. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

"33. 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) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) 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 it 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

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averments about its existence. It is always easier to prove a positive fact than to prove a negative fact."

31. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down as under :-

"In the very nature of things there cannot to a straightjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice? according to law and not humor. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharm v.Workfild).

32. In similar manner, the Hon'ble Supreme Court in Chairman-Cum-M.D Coal India Ltd and others Vs Ananta Saha & Ors reported in 2011 (5) SC 142 has held that the issue of entitlement of back wages has been considered by this Court time and again. It has been consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual

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scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic.

33. The workman-herein has stated in cross-examination:

"I am not working anywhere nowadays. However, I sell Peanuts and Bhutta during their respective seasons. I have my family members which include my wife, one son and three daughters. One son and one daughter are married. The married daughter is settled in Bihar and the married son is settled in the Village-Bhewar Sikaria, Jahanabad, Bihar. I am able to sustain myself by selling peanuts.

In case I am called for duty. I am willing to go to Noida..."

34. So far as the expression "gainful employment in an establishment" is concerned, it has been held by the courts that the self-employment too is not employment in an establishment. This question fell for consideration before the Apex Court in (1984) 4 SCC 635 entitled Rajinder Kumar Kundra Vs. Delhi Administration while considering the question relating to award of back wages, the court noticed thus:-

"It was next contended on behalf of the appellant that reinstatement with full back wages be awarded to him. Mr. P.K. Jain, learned counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross- examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father- in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly

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unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in- law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits."

(the emphasis is mine) (as quoted in para 16 of "Kishan Lal & Sons vs Govt. Of. Nct. Of Delhi & Ors." {WRIT PETITION (CIVIL) NO. 2211/1998 decided on 28 April, 2010})

35. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.

36. The ISSUES No.5 & 6 are also decided in favour of the workman and against the management-herein.

37. In view of the facts of the case and the case law(s) on the point, the present case the workman deserves to be reinstated with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,020/- per month w.e.f. **w.e.f. 03.07.2014** till date and further as per the rule.

38. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,020/- per month w.e.f. **w.e.f. 03.07.2014** till date and further as per the rule.

39. Matter / Reference answered accordingly. Disposed of.

40. A copy of the award be uploaded on the website of RADC through Incharge Computer Branch. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

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41. Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through VC from home office.

Dated:30-06-2020

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT

ROUSE AVENUE COURTS , NEW DELHI

LC No-2004/16,

Sh. Akhilesh Kumar Vs. M/s A B Fashion Pvt. Ltd.

ANNOUNCED THROUGH VIDEO CONFERENCING FROM HOME OFFICE.

30-06-2020

File taken up today as case is preponed from 13-07-2020 to today i.e. 30-06-2020 and the notices for the same have already been issued to ARW & ARM through whatsapp/VC/Electronic mode on their mobile number(s)/email IDs provided by them for pronouncement of final order in this case. The communication were also established with ARW/ARM through whatsapp/e-mail/VC on 19-06-2020 & 26-06-2020 for filing of written submission and fixing of this case for final order for today i.e. on 30-06-2020.

Present : Sh. Laxmi Chandra Advocate, AR of the workman through electronic mode i.e. VC, email ID (lcf223@gmail.com) & Mobile No:9871165156, who had already addressed final argument in court and had given consent to pass final order in this case.

Sh. Vinay Sabharwal, Advocate Authorized Representative of Management through electronic mode i.e. VC, email ID (sabharwalvinay0@gmail.com), Mobile No:9810080522, who had already filed his final written submission/Argument on the official e-mail ID of the court i.e. (reader polccourtroom no.308radc@gmail.com) .

Vide my separate detailed order An Award is passed in favour of the workman and against the management. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,020/- per month w.e.f. **w.e.f. 03.07.2014** till date and further as per the rule. File be consigned to record room.

Announced through VC from home office.
Dated:30-06-2020

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI

LC No. - 1998/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Sugreev Gaur s/o Sh. Ram Dal Gaur

R/o WX-B 83, Narayana Village, New Delhi-110015 .....Workman

VERSUS

M/s A & B FASHIONS PVT. LTD.

84/2, W.H.S Kirti Nagar New Delhi-110015

(now at G-1, sector-1, NOIDA (UP) .....Management

Date of Institution : 23.01.2015
Date of Final Arguments :14.01.2020
Date of Award :30.06.2020

AWARD

1. The Workman has filed the present statement of claim under S.2-A of the Industrial Dispute Act. 1947, against the management-herein pursuant to the order No. ID/341/CO-I/14/WD/LAB/6944 dated 13.12.2014. The conciliation officer stated in thus in his "Failure Report" :

"Despite making several efforts the industrial dispute could not be resolved and therefore as per and therefore as per provisions of Section 2-A (1) and (2) of the Industrial Disputes act, 1947, the undersigned hereby issues his failure report, as the workman / representative requested for the same as he wants to file the matter directly before concerned Labour Court / Industrial Tribunal.

Therefore, you are hereby advised to file the claim / Industrial dispute to appropriate Labour court or tribunal which has power and jurisdiction upon dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

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2. The claimant-herein has filed the claim seeking reinstatement of service along-with consequential benefits stating that the workman-herein had been working as "tailor" with the management as permanent employee since **12.03.2008** on the last drawn salary of **Rs.9,183/- per month**. It is the case of the claimant-herein is that the management used to take 12 hr duty without paying the overtime at the prescribed double-rate. As per the claimant service record was maintained and not attendance card, salary slip were issued by the management. No Bonus / Minimum wages were given by the management. Only the facilities of PF and ESI were provided by the management. As per the claim when the workman-herein sought legal facilities the management got annoyed and terminated the services of the workman-herein **w.e.f. 07.07.2014** without any reason and without conducting any domestic enquiry.

3. The management has filed the Written Statement and denied the averments of the workman-herein and stated that the services of the workman-herein were not terminated, rather the workman-herein expressed her desire to leave the job. The management accepted her resignation and kept her full & final settled amount ready but the work-man did not come to receive it. The letter dated 14.07.2014 was written by the management to the workman-herein so as to tell her to collect her settled amount but to no avail. The management has asserted that the date of joining of the workman is **12.04.2010**. All the other averments of the workman-herein are denied by the management.

4. The issues were framed:

ISSUE No.1 : Whether the claimant joined the services of the management on 12.04.2010 and not on 12.03.2008 as alleged by the management, if so, its effect? OPM

ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the

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management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE No.3 : Whether the claim of the claimant is maintainable in the present form as the management has alleged that workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

ISSUE No.5: Whether the workman is entitled to the relief? OPW

ISSUE No.6: RELIEF

5. First of all the Issue No.3 shall be disposed of.

ISSUE No.3 : Whether the claim of the claimant is maintainable in the present form as the management has alleged that workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

6. The perusal of the failure report (Ex.WW-1/1) it under S.2-A(1) & (2) of the I.D. Act stating that the management had not joined the proceedings before the Conciliation Officer despite various opportunities given. The said failure report dated 13.12.014 advised the claimant to file claim in the appropriate Labour Court.

7. For convenient reference Section 2-A I reproduced herein-below:-

S.2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. –

[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination

shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)] Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

8. By Act 35 of 1965, Section 2A was added to the statute book. As its objects and reasons show, the provision was added because it was found that the individual workers had no right to seek a reference of their individual disputes pertaining to service. Section 2A therefore was added fiction was created by Section 2A for a limited purpose of treating 'individual dispute' as an 'industrial dispute'. As the objects and reasons suggest, Section 2A was amended to provide a direct access to the Court to the workman in case of a dispute relating to termination of service and also limitation for raising the dispute as industrial dispute.

9. It needs to be noted that Section 2A, read as the whole provides for a complete mechanism for redressing the grievance of workmen on termination of his service. It creates a fiction to treat an individual dispute as industrial dispute. Despite existence of Section 12 for conciliation, it provides separately for application to be made to the Conciliation Officer for conciliation of dispute. It further provides for direct application to the Labour Court for relief. It also provides that the Labour Court shall have the same power and jurisdiction to adjudicate in accordance with the provisions of the Act and all

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provisions of the Act shall apply to such adjudication. It is thus a complete code for adjudication of an individual dispute.

10. This ISSUE is thus decided in favour of the workman-herein and the management-herein.

ISSUE No.1 : Whether the claimant joined the services of the management on 12.04.2010 and not on 12.03.2008 as alleged by the management, if so, its effect? OPM

ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

11. The management-herein has asserted that the date of joining of the workman-herein is 12.04.2010 and has proved the following documents:

i. **Ex. WW-1/M-1 (ESIC Temporary Identity Certificate)**
ii. **Ex.WW-1/M-2 (letter of probation extension).**
iii. **Ex.-MW-1/1 (Appointment letter);**
iv. **Ex.MW-1/2 (handwritten application letter of workman-herein);**
v. **Ex.MW-1/3 ESIC card copy);**
vi. **MW-1/5 (nomination & declaration form);**

12. In view of the documents placed on record by the management it is amply proved that the date of joining of the workman-herein is **12.04.2010** *(and not*

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12.03.2008). Thus this ISSUE is decided in favour of the management and against the workman-herein.

13. Thus this ISSUE is decided in favour of the management and against the workman-herein.

14. As far as the aspect of 'full and final settlement" is concerned the management-herein has relied upon the following documents regarding the settlement.

    i. **Ex.MW-1/7 (letter dated 14.07.2014 regarding full and final settlement of account etc.**

    ii. **Ex.MW-1/8 Postal receipt dated 14.07.2014)**

15. The Cross-examination of MW-1 reveals : ***"....No any notice of shortage of work was circulated or pasted on the notice board of the unit. Voln. The workman was informed verbally. The shortage of work in the management started after Tsunami in Japan because our expert work used to be with Japan. It was in the year 2013-14. The workman had not given in writing that he was not willing to work. The portion from A to A in para 8 of my affidavit in evidence Ex.MW1/A is not entirely correct. I had signed the affidavit after going through the contents of the same. It is correct that no full and final settlement was given to the workman during conciliation proceedings. The management has sent a letter to the workman for collecting full and final settlement. The letter must be available in the record of the management. The said letter is not filed on record. The said letter was sent at the address available with the management in its record. ...The management never terminated the services of the workman. The workman left the job of its own. The workman is still on the roles of management in Noida. The ESI account of the workman has not been closed. .."***

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16. In view of the facts and evidence on record it is hard to believe the version of the management regarding any substantial settlement.

17. Full and final settlement is usually used by the employers to absolve themselves from all the previous dues and claims of their employees. It is usually actuated in the form of a settlement contract and effectively concludes the employer-employee relationship. Ideally such a settlement ought to serve its purpose and lead to the dissolution of all the pre-existing disputes and claims between the employer and employee. Sadly, that is not always the case. Employers usually get dragged into the labour courts for certain previous dues or claims which are claimed by the employees to be beyond the purview of the terms of settlement. The author proposes to analyse several judgments of courts to examine the legal position relating to such matters.

18. In P. Selvaraj v. The Management of Shardlow India (W.A.No.1478 of 2006), the Madras High Court was of the opinion that where a full and final settlement was a predicament whereby it was mandatory for an employee to sign it to get any amount, even if it was less than the sum he was entitled to, in those cases the full and final settlement will not stand, and the employee can claim the sum he was entitled to. It also asserted that an employee cannot be estopped from claiming the gratuity amount by virtue of section 14 of Payment of Gratuity Act, 1972, since it has an overriding effect over any other enactment or any instrument or contract.

19. A full and final settlement doesn't necessarily mean that the employer is exonerated from providing its employee all the benefits. The employer still has to pay the gratuity amount to its employees, which cannot be contracted out by it. It usually depends on the terms and conditions of the settlement agreement; all those pending disputes and claims, which are addressed within the said terms and conditions, will stand fully resolved and recovered.

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20. To understand the word' full and final settlement', it is to be understood first that what amount may come or may be included in full and final settlement. As far as I.D Act is concerned, there is no definition of the phrase ' full and final settlement' but as far as various pronouncements are concerned, the word 'full and final settlement' would simply mean that it would include such an amount which if paid by the management and accepted and received by the workmen then thereafter there would be no claim either of the management upon the workmen or vice versa with respect to any monetary benefits qua the terms and nature of employment. Therefore, if a wider view is taken then it would include that all amount which the management paid to the workmen at the time of leaving/retiring/terminating the job i.e. their earned wages , leave encashment, bonus, amount of PF, amount towards gratuity if payable, retiral benefits and which may also include any other amount which the workmen owe to the management including the amount which the management has given to the workmen during its tenure by way of advancing loan or by way of any legal facility attached to the job entrusted to the workmen like accommodation or conveyance if any, or any other such benefit which the workmen have to return to the management at the time of such settlement & after adjusting all such benefits, the terms of full and final would be arrived at.

21. It is not possible to hold this issue in favour of the management because the witness who had witnessed the final payment is not examined. The settlement projected by the management is not in conformity with Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957. Therefore, the rulings urged by the workman would apply in this case and whereas the rulings relied on by the management on this aspect of resignation, do not attract to the present facts of the case.

Rule 58 in The Industrial Disputes (Central) Rules, 1957

Memorandum of settlement.—

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(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.

(2) The settlement shall be signed by—

(a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; 1[(b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at meeting of the workmen held for the purpose;] 2[(c) in the case of the workman in an industrial dispute under section 2A of the Act, by the workman concerned.] Explanation.— In this rule "officer" means any of the following officers, namely:—

(a) the President;

(b) the Vice-President;

(c) the Secretary (including the General Secretary);

(d) a Joint Secretary;

(e) any other officer of the trade union authorised in this behalf by the President and Secretary of Union.

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned

22. The version of the management is that the workman on coming to know that there is shortage of work, herself expressed his willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management with full and final but later on

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did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post. The aspect of the said letter dated 14.07.2014 (Ex.MW-1/7) has already been discussed and held in favour of the workman-herein. However, there is no commination placed on record by the management either before or after shifting to NOIDA to show the directions / offer / intention etc. the workman to join at the shifted place at NOIDA. The management has also not produced any official communication to the Labour Department regarding the shifting of the premises to NOIDA. There is nothing on record to prove that any amount was paid or even intended to be paid by the management to the workman-herein. Thus the act of the management to issue the letter dated 14.07.2014 (Ex.MW-1/7) appears to be an empty formality. The management-herein has not been able to discharge its onus to prove that the workmen-herein had settled by way of amounts as "Full and final" settlement.

23. Thus the ISSUE regarding "full and final settlement is decided against the management and in favour of the workmen-herein.

24. It may be noted that the ID Act states that termination by way of retrenchment can be for any reason whatsoever. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. v. Sambu Nath Mukerji and others also followed this interpretation of the definition and held that even "striking off the name of the workman from the rolls" for being absent without leave is "retrenchment". Hence, the reasons of termination are not limited to any particular class of reasons, and need not be only on economic grounds such as redundancy, etc. Apart from the issue of definition, what is critical is that an employer must carry out retrenchment (other than dismissal on grounds of misconduct), as per the requirements of section 25F of the ID Act. This provision provides for the employer to fulfil certain conditions before retrenching any employee. The condition given under section 25F(c) states

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requires the employer to give notice to appropriate government in addition to the other two conditions. What is important to note is that the notice must state the reason for retrenchment of the employee and the notice must be issued as is prescribed in the rules framed under the Act.

25. In the present case the management-herein has not followed any procedure. The management-herein has submitted written arguments thereby raising the following contentions:

    a. The pleadings of the claim are not specific and do not give the necessary details like mode of termination (verbal or written); authorised person who conveyed the termination; authority of the person who terminated the service; the circumstances under which the termination was made.

    b. No independent witness has been examined by the workman-herein;

    c. Self-serving claims are not enough proof of the case of the workman;

    d. The management-herein has examined MW to prove that the persons named by the workman-herein were not authorised by the management to terminate the services of the workman-herein;

    e. Informing the workman that there was shortage of work and making full and final payment does not amount to termination of the services;

    f. The management had made the offer to the workman to report to the duty at NOIDA (UP) premises;

    g. The management has sought directions to the workman to report to the duty at NOIDA (UP) premises.

26. The contentions and the judgments relied upon by the management are to the effect when a workman has no oral /documentary evidence to back up the claim except the statement of the workman in the affidavit-of-evidence.

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However, that is not the case here. The workman-herein has relied upon substantial evidence.

27. Once the workman-herein discharges his / her primary onus it is for the management to disprove the version of the workman and also to adduce its own evidence. The management-herein has not been able to discharge its onus to prove its own case by cogent evidence.

28. The Issues No.2 & 3 are decided in favour of the workman and against the management. The ISSUE No.4 relating to unjustified / illegal termination of service is also decided in favour of the workman-herein and against the management.

29. The ISSUE relating to unjustified / illegal termination of service is also decided in favour of the workman-herein and against the management.

ISSUE No.5: Whether the workman is entitled to the relief? OPW

ISSUE No.6: RELIEF

30. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.

31. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition,

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or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

32. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

33. The ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings :

a. Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75;

b. Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422;

c. General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591).

34. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

"33. 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) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

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iii) 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 it 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 averments about its existence. It is always easier to prove a positive fact than to prove a negative fact."

35. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down as under :-

"In the very nature of things there cannot to a straightjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice? according to law and not humor. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharm v. Workfild).

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36. In similar manner, the Hon'ble Supreme Court in Chairman-Cum-M.D Coal India Ltd and others Vs Ananta Saha & Ors reported in 2011 (5) SC 142 has held that the issue of entitlement of back wages has been considered by this Court time and again. It has been consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic.

37. The workman-herein has stated in cross-examination: ***"I am not working anywhere nowadays. I am doing agricultural farming in my village and I stay in my village and come to Delhi only to attend the court date. ....I have my family members which include my wife, one son and one daughter..."***

38. So far as the expression "gainful employment in an establishment" is concerned, it has been held by the courts that the self-employment too is not employment in an establishment. This question fell for consideration before the Apex Court in (1984) 4 SCC 635 entitled Rajinder Kumar Kundra Vs. Delhi Administration while considering the question relating to award of back wages, the court noticed thus:-

"It was next contended on behalf of the appellant that reinstatement with full back wages be awarded to him. Mr. P.K. Jain, learned counsel for the employer countered urging that there is evidence to show that the appellant was

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gainfully employed since the termination of service and therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross- examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father- in-law and that he had no alternative source of maintenance. ***If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment.*** *The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in- law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits."*

(the emphasis is mine) (as quoted in para 16 of "Kishan Lal & Sons vs Govt. Of. Nct. Of Delhi & Ors." {WRIT PETITION (CIVIL) NO. 2211/1998 decided on 28 April, 2010})

39. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.

40. The ISSUES No.5 & 6 are also decided in favour of the workman and against the management-herein.

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41. In view of the facts of the case and the case law(s) on the point, the present case the workman deserves to be reinstated with full backwages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 07.07.2014** till date and further as per the rule.

42. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 07.07.2014** till date and further as per the rule.

43. Matter / Reference answered accordingly. Disposed of.

44. A copy of the award be uploaded on the website of RADC through Incharge Computer Branch. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

45. Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through VC from home office.

Dated:30-06-2020.

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT

ROUSE AVENUE COURTS , NEW DELHI

LC No. - 1998/2016

Shri Sugreev Gaur Vs. M/s A B Fashion Pvt. Ltd.

ANNOUNCED THROUGH VIDEO CONFERENCING FROM HOME OFFICE.

30-06-2020

File taken up today as case is preponed from 13-07-2020 to today i.e. 30-06-2020 and the notices for the same have already been issued to ARW & ARM through whatsapp/VC/Electronic mode on their mobile number(s)/email IDs provided by them for pronouncement of final order in this case. The communication were also established with ARW/ARM through whatsapp/e-mail/VC on 19-06-2020 & 26-06-2020 for filing of written submission and fixing of this case for final order for today i.e. on 30-06-2020.

Present : Sh. Laxmi Chandra Advocate, AR of the workman through electronic mode i.e. VC, email ID (lcf223@gmail.com) & Mobile No:9871165156, who had already addressed final argument in court and had given consent to pass final order in this case.

Sh. Vinay Sabharwal, Advocate Authorized Representative of Management through electronic mode i.e. VC, email ID (sabharwalvinay0@gmail.com), Mobile No:9810080522, who had already filed his final written submission/Argument on the official e-mail ID of the court i.e. (reader polccourtroom no.308radc@gmail.com).

Vide my separate detailed order An Award is passed in favour of the workman and against the management. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 07.07.2014** till date and further as per the rule. File be consigned to record room.

Announced through VC from home office.
Dated:30-06-2020.

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI

LC No. - 1522/2016

INDUSTRIAL DISPUTE BETWEEN :-

Smt. Laxmi w/o Sh. Shyam Prakash,
R/o 1 B /15 Single Storey, Ramesh Nagar,
New delhi-110015 .....Workman

VERSUS

M/s A & B FASHIONS PVT. LTD.
84/2, W.H.S Kirti Nagar New Delhi-110015
(now at G-1, sector-1, NOIDA (UP) .....Management

Date of Institution	**: 23.01.2015**
Date of Final Arguments	**:14.01.2020**
Date of Award	**:30.06.2020**

AWARD

1. The Workman has filed the present statement of claim under S.2-A of the Industrial Dispute Act. 1947, against the management-herein pursuant to the order No. ID/341/CO-I/14/WD/LAB/6944 dated 13.12.2014. The conciliation officer stated in thus in his "Failure Report" :

"Despite making several efforts the industrial dispute could not be resolved and therefore as per and therefore as per provisions of Section 2-A (1) and (2) of the Industrial Disputes act, 1947, the undersigned hereby issues his failure report, as the workman / representative requested for the same as he wants to file the matter directly before concerned Labour Court / Industrial Tribunal.

Therefore, you are hereby advised to file the claim / Industrial dispute to appropriate Labour court or tribunal which has power and jurisdiction upon dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

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2. The claimant-herein has filed the claim seeking reinstatement of service along-with consequential benefits stating that the workman-herein had been working as "tailor" with the management as permanent employee since **14.04.2006** on the last drawn salary of Rs.9,183/- per month. It is the case of the claimant-herein is that the management used to take 12 hr duty without paying the overtime at the prescribed double-rate. As per the claimant service record was maintained and not attendance card, salary slip were issued by the management. No Bonus / Minimum wages were given by the management. Only the facilities of PF and ESI were provided by the management. As per the claim when the workman-herein sought legal facilities the management got annoyed and terminated the services of the workman-herein **w.e.f. 03.07.2014** without any reason and without conducting any domestic enquiry.

3. The management has filed the Written Statement and denied the averments of the workman-herein and stated that the services of the workman-herein were not terminated, rather the workman-herein expressed her desire to leave the job. The management accepted her resignation and kept her full & final settled amount ready but the work-man did not come to receive it. The letter dated 14.07.2014 was written by the management to the workman-herein so as to tell her to collect her settled amount but to no avail. **The management has asserted that the date of joining of the workman is 02.05.2008.** All the other averments of the workman-herein are denied by the management.

4. The issues were framed:

ISSUE No.1 : Whether the claimant joined the services of the management on 02.05.2008 and not on 14.04.2006 as alleged by the management, if so, its effect? OPM

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ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE No.3 : Whether the claim of the claimant is maintainable in the present form as the management has alleged that workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

ISSUE No.5: Whether the workman is entitled to the relief? OPW

ISSUE No.6: RELIEF

5. First of all the Issue No.3 shall be disposed of.

ISSUE No.3 : Whether the claim of the claimant is maintainable as the workman has not allegedly followed the mandatory provision of S.10 I.D. Act? OPW

6. The perusal of the failure report (Ex.WW-1/1) it under S.2-A(1) & (2) of the I.D. Act stating that the management had not joined the proceedings before the Conciliation Officer despite various opportunities given. The said failure report dated 13.12.014 advised the claimant to file claim in the appropriate Labour Court.

7. For convenient reference Section 2-A I reproduced herein-below:-

S.2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. –

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[(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)] Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

8. By Act 35 of 1965, Section 2A was added to the statute book. As its objects and reasons show, the provision was added because it was found that the individual workers had no right to seek a reference of their individual disputes pertaining to service. Section 2A therefore was added fiction was created by Section 2A for a limited purpose of treating 'individual dispute' as an 'industrial dispute'. As the objects and reasons suggest, Section 2A was amended to provide a direct access to the Court to the workman in case of a dispute relating to termination of service and also limitation for raising the dispute as industrial dispute.

9. It needs to be noted that Section 2A, read as the whole provides for a complete mechanism for redressing the grievance of workmen on termination of his service. It creates a fiction to treat an individual dispute as industrial dispute. Despite existence of Section 12 for conciliation, it provides separately for application to be made to the Conciliation Officer for conciliation of dispute. It further provides for direct application to the Labour Court for relief. It also provides that the Labour Court shall have the same power and jurisdiction to

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adjudicate in accordance with the provisions of the Act and all provisions of the Act shall apply to such adjudication. It is thus a complete code for adjudication of an individual dispute.

10. This ISSUE is thus decided in favour of the workman-herein and the management-herein.

ISSUE No.1 : Whether the claimant joined the services of the management on 02.05.2008 and not on 14.04.2006 as alleged by the management, if so, its effect? OPM

ISSUE No.2 : Whether the workman on coming to know that there is shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management in full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post as claimed by the management? OPM

ISSUE NO. 4 :WHETHER THE SERVICES OF THE WROKMAN HAS BEEN TERMINATED ILLGALLY AND UNJUSTIFIABLY BY THE MANAGEMENT? OPW

11. The management-herein has asserted that the date of joining of the workman-herein is 02.05.2008 and has proved the following documents:

i. **Ex.-MW-1/1 (Appointment letter);**

ii. **Ex.MW-1/2 (application letter of workman-herein);**

iii. **Ex.MW-1/3 ESIC card copy);**

iv. **MW-1/5 (nomination & declaration form);**

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v. **Ex.MW-1/6 (letter of probation extension).**

12. The workman-herein has admitted in her cross-examination;

"It is correct that my date of appointment with the management is 01.01.2008. The PF deduction was started on 02.05.2008."

13. In view of the documents placed on record by the management and particularly in view of the admission of the workman-herein it is amply proved that the date of joining of the workman-herein is **02.05.2008** *(and not 14.04.2006).* **Thus this ISSUE is decided in favour of the management and against the workman-herein.**

14. As far as the aspect of 'full and final settlement" is concerned the management-herein has relied upon the following documents regarding the settlement.

i. **Ex.MW-1/7 (letter dated 14.07.2014 regarding full and final settlement of account etc.**

ii. **Ex.MW-1/8 Postal receipt dated 14.07.2014)**

15. The Cross-examination of MW-1 reveals : ***".... The workman was informed orally that there was a shortage of work available with the management. She was informed of the shortage of work initially in December, 2014 and thereafter, lastly in June, 2015. The management carried its business at the present address till 6th September, 2015. In the first week of July, the management had offered full and final amount for settlement to the workmen. The management has not filed any document pertaining to said offer of full and final amount for settlement. It is correct that no proof of delivery of letter Ex.MW1/7 is placed on record by the management...."***

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16. The perusal of the letter dated Ex.MW-1/7 (letter dated 14.07.2014) regarding full and final settlement of account etc. reveals no amount of settlement. In the absence of any amount mentioned in the letter it is hard to believe the version of the management regarding any substantial settlement.

17. Full and final settlement is usually used by the employers to absolve themselves from all the previous dues and claims of their employees. It is usually actuated in the form of a settlement contract and effectively concludes the employer-employee relationship. Ideally such a settlement ought to serve its purpose and lead to the dissolution of all the pre-existing disputes and claims between the employer and employee. Sadly, that is not always the case. Employers usually get dragged into the labour courts for certain previous dues or claims which are claimed by the employees to be beyond the purview of the terms of settlement. The author proposes to analyse several judgments of courts to examine the legal position relating to such matters.

18. In P. Selvaraj v. The Management of Shardlow India (W.A.No.1478 of 2006), the Madras High Court was of the opinion that where a full and final settlement was a predicament whereby it was mandatory for an employee to sign it to get any amount, even if it was less than the sum he was entitled to, in those cases the full and final settlement will not stand, and the employee can claim the sum he was entitled to. It also asserted that an employee cannot be estopped from claiming the gratuity amount by virtue of section 14 of Payment of Gratuity Act, 1972, since it has an overriding effect over any other enactment or any instrument or contract.

19. A full and final settlement doesn't necessarily mean that the employer is exonerated from providing its employee all the benefits. The employer still has to pay the gratuity amount to its employees, which cannot be contracted out by it.

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It usually depends on the terms and conditions of the settlement agreement; all those pending disputes and claims, which are addressed within the said terms and conditions, will stand fully resolved and recovered.

20. To understand the word' full and final settlement', it is to be understood first that what amount may come or may be included in full and final settlement. As far as I.D Act is concerned, there is no definition of the phrase ' full and final settlement' but as far as various pronouncements are concerned, the word 'full and final settlement' would simply mean that it would include such an amount which if paid by the management and accepted and received by the workmen then thereafter there would be no claim either of the management upon the workmen or vice versa with respect to any monetary benefits qua the terms and nature of employment. Therefore, if a wider view is taken then it would include that all amount which the management paid to the workmen at the time of leaving/retiring/terminating the job i.e. their earned wages , leave encashment, bonus, amount of PF, amount towards gratuity if payable, retiral benefits and which may also include any other amount which the workmen owe to the management including the amount which the management has given to the workmen during its tenure by way of advancing loan or by way of any legal facility attached to the job entrusted to the workmen like accommodation or conveyance if any, or any other such benefit which the workmen have to return to the management at the time of such settlement & after adjusting all such benefits, the terms of full and final would be arrived at.

21. It is not possible to hold this issue in favour of the management because the witness who had witnessed the final payment is not examined. The settlement projected by the management is not in conformity with Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957. Therefore, the rulings urged by the

workman would apply in this case and whereas the rulings relied on by the management on this aspect of resignation, do not attract to the present facts of the case.

Rule 58 in The Industrial Disputes (Central) Rules, 1957
Memorandum of settlement.—
(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.
(2) The settlement shall be signed by—
(a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; 1[(b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at meeting of the workmen held for the purpose;] 2[(c) in the case of the workman in an industrial dispute under section 2A of the Act, by the workman concerned.] Explanation.—
In this rule "officer" means any of the following officers, namely:—

- **(a) the President;**
- **(b) the Vice-President;**
- **(c) the Secretary (including the General Secretary);**
- **(d) a Joint Secretary;**
- **(e) any other officer of the trade union authorised in this behalf by the President and Secretary of Union.**

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.
(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned

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22. The version of the management is that the workman on coming to know that there was shortage of work, herself expressed her willingness not to work with the management and voluntarily resigned from services of the management and settled the account with the management with full and final but later on did not turn up to receive the amount despite letter dated 14.07.2014 sent by the management to the workman through speed post. The aspect of the said letter dated 14.07.2014 (Ex.MW-1/7) has already been discussed and held in favour of the workman-herein. However, there is no communication placed on record by the management either before or after shifting to NOIDA to show the directions / offer / intention etc. the workman to join at the shifted place at NOIDA. The management has also not produced any official communication to the Labour Department regarding the shifting of the premises to NOIDA. Moreover the workman-herein has stated in her cross-examination: ***"I visited lastly to the factory of the management on 03.07.2014."*** However, there is nothing on record to prove that any amount was paid or even intended to be paid by the management to the workman-herein. Thus the act of the management to issue the letter dated 14.07.2014 (Ex.MW-1/7) appears to be an empty formality.

23. The management-herein has not been able to discharge its onus to prove that the workmen-herein had settled by way of amounts as "Full and final" settlement.

24. Thus the ISSUE regarding "full and final settlement is decided against the management and in favour of the workmen-herein.

25. It may be noted that the ID Act states that termination by way of retrenchment can be for any reason whatsoever. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. v. Sambu Nath Mukerji and others also followed this interpretation of the definition and held that even "striking off the name of the workman from

the rolls" for being absent without leave is "retrenchment". Hence, the reasons of termination are not limited to any particular class of reasons, and need not be only on economic grounds such as redundancy, etc. Apart from the issue of definition, what is critical is that an employer must carry out retrenchment (other than dismissal on grounds of misconduct), as per the requirements of section 25F of the ID Act. This provision provides for the employer to fulfil certain conditions before retrenching any employee. The condition given under section 25F(c) states requires the employer to give notice to appropriate government in addition to the other two conditions. What is important to note is that the notice must state the reason for retrenchment of the employee and the notice must be issued as is prescribed in the rules framed under the Act. In the present case the management-herein has not followed any procedure.

26. As far as the termination from the service is concerned the workman-herein has categorically stated in her cross-examination :

"...Mr. Sanjeev and Mr. Bhuvan of the management removed me from service..... Mr. Sanjeev and Mr. Bhuvan were in the Accounts Department of the management. I do not know whether Mr. Sanjeev and Mr. Bhuvan had any authority or power from the management to terminate the services of any employee.

I visited lastly to the factory of the management on 03.07.2014. It is wrong to suggest that no one from the management terminated my services."

27. It may be noted that the ID Act states that termination by way of retrenchment can be for any reason whatsoever. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. v. Sambu Nath Mukerji and others also followed this interpretation of the definition and held that even "striking off the name of the workman from

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28. In the present case the management-herein has not followed any procedure. The management-herein has submitted written arguments thereby raising the following contentions:

a. The pleadings of the claim are not specific and do not give the necessary details like mode of termination (verbal or written); authorised person who conveyed the termination; authority of the person who terminated the service; the circumstances under which the termination was made.

b. No independent witness has been examined by the workman-herein;

c. Self-serving claims are not enough proof of the case of the workman;

d. The management-herein has examined MW to prove that the persons named by the workman-herein were not authorised by the management to terminate the services of the workman-herein;

e. Informing the workman that there was shortage of work and making full and final payment does not amount to termination of the services;

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f. The management had made the offer to the workman to report to the duty at NOIDA (UP) premises;

g. The management has sought directions to the workman to report to the duty at NOIDA (UP) premises.

29. The contentions and the judgments relied upon by the management are to the effect when a workman has no oral / documentary evidence to back up the claim except the statement of the workman in the affidavit-of-evidence. However, that is not the case here. The workman-herein has relied upon substantial evidence. Once the workman-herein discharges his / her primary onus it is for the management to disprove the version of the workman and also to adduce its own evidence. The management-herein has not been able to discharge its onus to prove its own case by cogent evidence.

30. **The ISSUE No.2, 3 & 4 are decided in favour of the workman-herein and against the management.**

ISSUE No.5: Whether the workman is entitled to the relief? OPW

ISSUE No.6: RELIEF

31. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.

32. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement"

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means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

33. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

- The ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings :
- Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75;
- Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422;
- General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591).

34. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

"33. 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) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any,

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found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) 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 it 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 averments about its existence. It is always easier to prove a positive fact than to prove a negative fact."

35. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down as under :-

> *"In the very nature of things there cannot to a straightjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice?*

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according to law and not humor. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharm v.Workfild).

36. In similar manner, the Hon'ble Supreme Court in Chairman-Cum-M.D Coal India Ltd and others Vs Ananta Saha & Ors reported in 2011 (5) SC 142 has held that the issue of entitlement of back wages has been considered by this Court time and again. It has been consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic.

37. The workman-herein has stated in cross-examination:

"...My demand in the present case is to pay me whatever amount is due from the management as per law including back wages. I twice had fracture in my both feet, therefore, I have not been able to do any job after cessation of my job..."

38. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.

39. The ISSUES No.5 & 6 are also decided in favour of the workman and against the management-herein.

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40. In view of the facts of the case and the case law(s) on the point, in the present case the workman deserves to be reinstated with full backwages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 03.07.2014** till date and further as per the rule.

41. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 03.07.2014** till date and further as per the rule.

42. Matter / Reference answered accordingly. Disposed of.

43. A copy of the award be uploaded on the website of RADC through Incharge Computer Branch. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

44. Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through VC from home office.

Dated:30-06-2020

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS , NEW DELHI
LC No-1522/2016,
Smt. Laxmi Vs. M/s A B Fashion Pvt. Ltd.

ANNOUNCED THROUGH VIDEO CONFERENCING FROM HOME OFFICE.

30-06-2020

File taken up today as case is preponed from 13-07-2020 to today i.e. 30-06-2020 and the notices for the same have already been issued to ARW & ARM through whatsapp/VC/Electronic mode on their mobile number(s)/email IDs provided by them for pronouncement of final order in this case. The communication were also established with ARW/ARM through whatsapp/e-mail/VC on 19-06-2020 & 26-06-2020 for filing of written submission and fixing of this case for final order for today i.e. on 30-06-2020.

Present : Sh. Laxmi Chandra Advocate, AR of the workman through electronic mode i.e. VC, email ID (lcf223@gmail.com) & Mobile No:9871165156, who had already addressed final argument in court and had given consent to pass final order in this case.

Sh. Vinay Sabharwal, Advocate Authorized Representative of Management through electronic mode i.e. VC, email ID (sabharwalvinay0@gmail.com), Mobile No:9810080522, who had already filed his final written submission/Argument on the official e-mail ID of the court i.e. (reader polccourtroom no.308radc@gmail.com) .

Vide my separate detailed order An Award is passed in favour of the workman and against the management. The management is directed to reinstate the workman-herein with full back wages alongwith the consequential relief as per the last drawn wages @ Rs.9,183/- per month **w.e.f. 03.07.2014** till date and further as per the rule.

File be consigned to record room.

Announced through VC from home office.

Dated:30-06-2020

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts,New Delhi
Judge Code : DL0271