

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT,  
ROUSE AVENUE COURT COMPLEX, NEW DELHI  
LIR NO.4382/2016**

INDUSTRIAL DISPUTE BETWEEN :-

**Sh. Nand Kishore s/o Sh. Munni Lal**

*through*

**DELHI OFFICES AND ESTABLISHMENT EMPLOYEES UNION  
BTR BHAWAN, 13A ROUSE AVENUE, NEW DEHI-11002**

.....Workman

VERSUS

**THE MANAGEMENT OF M/S SUNEJA HOSIERY,  
THROUGH :**

**SH. RAJENDAR SUNEJA S/O LATE SHRI RAMJI DAS (OWNER)  
R/O H.NO. 18A. PITAM PURA, ANANAD VIHAR, DELHI-110034**

**ALSO AT : 1038 GALI PATHSHALA WALI**

**MANAKPURA KAROL BAGH, NEW DELHI-110005**

.....Management

**Date of Institution : 16-09-2014**

**Date of Arguments : 12-03-2020**

**Date of Award : 30-07-2020 Through VC**

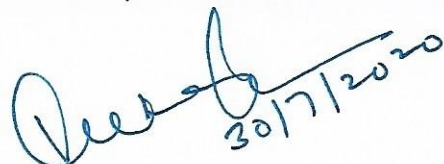
**AWARD**

1. The Dy. Labour Commissioner (CD), Government of NCT of Delhi vide its order No. F.24(24)97/Lab./CD/14/540, dated 15-09-2014, referred an industrial dispute of present worker namely Sh. Sunil Sharma with the above mentioned management to the Labour Court with the terms of reference:

***"Whether the services of workman Sh. Nand Kishore s/o Sh. Munni Lal have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is he entitled and what directions are necessary in this respect?"***

**VERSION OF THE CLAIMANT-WORKMAN AS PER THE CLAIM:**

2. As per the statement of claim filed workman had been working with the management as "Machine Operator" (Karigar) since April 1995 with the last drawn salary of Rs.7,000/- per month and was illegally terminated from the services on 17.05.2014. The workman was discharging his duties to the entire satisfaction of his superior and he has unblemished and

  
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uninterrupted record of 19 years of service services to his credit. The hard work of the workman was always appreciated and his acumen was appreciated. The management used to pay the advances to the workman and the same were recorded in note book. However, the appointment letter was not issued to the workman-herein. The work was carried out in the factory. The workman was not provided with the salary slip and the facilities like PF / ESI / Leave Book / Overtime / bonus / Minimum Wages / and no other statutory benefit was provided. The workman was asked to sign on the blank vouchers against the wishes of the workman-herein. The workman-herein repeatedly asked for the payment of minimum wages but the management always used to retain some portion of the salary.

3. In the month of May 2014 the workman was again asked to sign on blank paper and vouchers. On 17.05.2014 the management told the workman that the Govt. of NCT of Delhi had sealed the factory premises and therefore the management had closed down the factory premises. The workman was neither paid his pending salary nor salary in lieu of notice pay etc. Other legal benefits like closure compensation / gratuity were also not paid by the management. The workman had lodged a complaint to the SHO P.S Desh Bandhu Gupta Road. In the due course the management had received notice for the closure of the factory and were asked to shift the factory to Bawana Industrial area where the management was already allotted 100 meter plot. However, the said allotted plot is locked.
4. The workman-herein sent a demand notice dated 29.05.2014 to the management. The complaint was also lodged with the Asst. Labour Commissioner vide complaint / representation dated 02.06.2014. The Labour Officer had visited the premises of the management and asked the management to produce the papers / documents etc. on the dates 20.06.2014 and 30.06.2014. However, none from the management appeared and complied with the said directions. The inspector's report is also filed along with the case-herein. Thereafter, the workman raised the present industrial dispute.
5. It is the case of the workman-herein that he had completed 240 days of continuous service immediately preceding the year from the date of the termination from services. No show cause notice was issued by the management-herein and no enquiry was conducted.

  
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**VERSION OF THE MANAGEMENT AS PER THE WRITTEN STATEMENT (WS):**

6. The management filed a Written Statement and stated that the factory premises of the management was sealed by the MCD on 17.05.2014 and after that the workman-herein had himself left the job on his own after taking all his dues from the management. The management denied that the workman-herein had completed 240 days of services in the immediate preceding year. The management has stated that the workman-herein was appointed as "Helper" since 01.11.2013 and his last drawn salary was Rs.8,650/- per month. The demand notice has also not been denied by the management, however, it is stated to be frivolous. The visit of Labour Inspector has also not been denied by the management, however, as per the WS the management had infirmed that the workman had left job on his own.

**REJOINDER OF THE CLAIMANT-WORKMAN:**

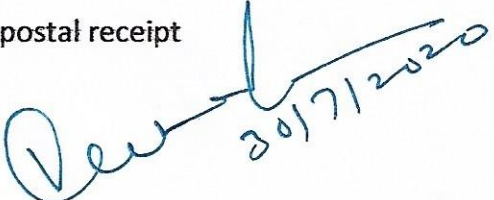
7. In his rejoinder/amended rejoinder the workman has reiterated his averments made in the statement of claim and denied the contentions of the management.
8. From the pleadings of the parties the following issues were framed on 29-10-2014:-

**ISSUE No.1 : Whether the workman himself left the job after sealing of the management by MCD on 17.05.2014 ? OPM**

**ISSUE No.2 : As per terms of reference.**

**EVIDENCE OF THE WORKMAN:**

9. The Workman has examined himself as WW1 and filed his evidence by way of affidavit which is exhibited as Ex.WW1/A. In his evidentiary affidavit the workman has reiterated the contents of the statement of claim. WW1/workman has relied upon the documents :
- i. Ex.WW1/1 – complaint dated 29.05.2014 to the SHO P.S. Desh Bandhu Gupta Road
  - ii. Ex.WW1/2 - demand letter dated 29-05-2014,
  - iii. Ex.WW-1/3 – Legal Demand Notice dated 02.06.2014 through UNION
  - iv. Ex. WW1/4 – Complaint to the Conciliation Officer Labour Department;
  - v. Ex. WW-1/5 – Reference Order by Dy. Labour Commissioner;
  - vi. Ex. WW-1/6 – Reply of management to the workman
  - vii. Ex. WW-1/7 - MCD document is photocopy of postal receipt

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- viii. Ex.WW-1/8 – Bill Cash Memo (colly.) which the workman-herein used to deal with on behalf of the management;
- ix. Ex. WW-1/9 (coly.) – vouchers of etc. which the workman-herein used to deal with on behalf of the management;
- x. Ex. WW-1/10 (coly.) A/c etc. which the workman-herein used to deal with on behalf of the management;
- xi. MARK – W1 : Report of the Inspector;
- xii. MARK-B : Postal Receipt;
- xiii. MARK—W3 (coly.) documents etc. which the workman-herein used to deal with on behalf of the management;

**EVIDENCE OF THE MANAGEMENT:**

10. The management has examined Sh. Rajendar Kumar Suneja (Owner) who has relied upon :

- a. Ex. MW-1/1 ---Copy of the application for employment dated 13.10.2013;
- b. Ex. MW-1/2 ---Copy of appointment letter dated 01.11.2013;
- c. Ex.MW-1/3 --- Copy of resignation letter dated 18.05.2014;
- d. Ex.MW-1/4 --- Copy of Full and final settlement dated 18.05.2014

11. I have already heard the Final Arguments on 12.03.2020 on behalf of the workman-herein and the Management-herein. On 28.07.2020 the case was fixed for the Final Order and through the Video Conferencing the consent was taken for passing the Final Award.

My findings on the issues are as under:-

**ISSUE No.1 : Whether the workman himself left the job after sealing of the management by MCD on 17.05.2014 ? OPM**

12. It is the case of the claimant-herein that he joined the management as “Machine Operator” since April 1995 with the last drawn salary of Rs.7,000/- per month and was not allowed to work w.e.f 17.05.2014.

13. The version of the management is that the workman had joined the management on 01.11.2013 as a “helper” with last drawn salary of Rs.8,650/- per month and himself left the

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job on 17.05.2014. As per the management, after the closure of the management due to MCD sealing the claimant has already taken his full and final dues of Rs.14,500/- on 18.05.2014.

14. By way of the order dated 21.07.2016 the management was directed to file the following documents :

- i. Muster Roll from 01.04.1995 to 17.05.2014
- ii. Attendance register from 01.04.1995 to 17.05.2014
- iii. Wage Register from 01.04.1995 to 17.05.2014

15. The management is relying upon its own self-authored document of appointment i.e. Ex.WW1/M-1 and Ex.WW-1/M-2 which are the application and appointment w.e.f. 01.11.2013. It is noteworthy that the said two documents are "temporary" employment for three months only. It is not the case of the management-herein that the claimant-herein was employed on "temporary terms of three months". Thus the said two documents do not inspire any confidence.

16. The perusal of the Ex.wW-1/2 (initial letter of demand dated 19.05.2014 sent by workman-herein) and its reply by the management vide document Ex.WW-1/6 reveals that the management had admitted that paragraph of the workman's letter regarding his employment as "Machine Operator" since April 1995. The only denial was regarding the monthly salary. Thus the management did not deny the occupation of the workman-herein as the "Machine Operator" since April 1995.

17. The management-witness Sh. Rajendar Kumar Suneja (MW-1) has admitted in his cross-examination:

***"I am owner of the management company. It is correct that my factory was running at the address mentioned in the evidentiary affidavit..... I used to maintain the salary register, attendance register, wages register, bonus register etc. Same are not being filed on record.....It correct that the a plot was allotted by the government to shift the factory at Bawana. It is correct that the factory at 10308/10 Gali Pathshala, Manakpura was sealed by the government as I did not comply with the directions."***

  
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18. Closure as defined under the I.D. act means closure of a place of employment or part thereof permanently. The management has admitted that the factory was sealed due to the non-compliance of the directions of the authorities. It is further admitted by the management that the plot was allotted by the government to shift the factory at Bawana. Thus this "relocation of factory" cannot be termed as "closure" under the I.D. Act. However, if the management-herein is treating it as "closure" it ought to have followed the prescribed procedure. The management did not bother to do even that. Moreover, after being relocated by the government it was the duty of the management to shift and start functioning from the relocated space. Instead, the management chose to illegally deal with the workman-herein. It was a matter of "transfer of workman" and not outright disengagement in the garb of settlement. The cross-examination of MW-1 reiterates the case of the workman-herein.

19. I am fortified with the observations of Hon'ble Bombay High Court in "Innovations Garment Limited v. S.K. Singe and Anr. 2002 II CLR 902" wherein management was directed to discontinue or stop the manufacturing activities under the law by the competent authority. It was held that shifting of a place of manufacturing from one location to another and discontinuing manufacture in the former location **does not** amount to closure of business.

**THE ASPECT OF "FULL & FINAL SETTLEMENT":**

20. The aspect of the 'full and final settlement' which has been vehemently asserted by the management.

21. The workman has remained unshaken during his cross-examination on the aspects of resignation and 'full and final settlement'. Regarding the document Ex.WW-1/M-3 (resignation of the claimant dated 18.05.2014) and Ex.WW-1/M-4 (Settlement-statement of the claimant dated 18.05.2014) his cross-examination reveals:

***" I joined the service of the management on 01.04.1995 as Karigar. My last drawn salary was Rs.7,000/- per month. I have not received any appointment letter. I have not submitted any application employment.***

***At this stage, document Ex.WW1/M-1 (OSR) is shown to the witness on which he denies to have been filed by him. He also denied his signature at point A on the same.***



***At this stage, document Ex.WW1/M-2 (OSR) i.e. copy of the appointment letter is shown to the witness on which he denies to have been filed by him. He also denied his signature at point A on the same. It is wrong to suggest that I have ben appointed with the management w.e.f 01.11.2013. Vol. I was appointed on 01.04.1995.***

***It is correct that the management was sealed by the government authorities on 17.05.2014. I have not submitted resignation on 18.05.2014.***

***At this stage, document Ex.WW1/M-3 (OSR) i.e. resignation letter is shown to the witness on which he denies to have been filed by him. He also denied his signature at point A on the same. Vol. The company is still functioning.***

***At this stage, document Ex.WW1/M-4 (OSR) i.e. full & final receipt is shown to the witness on which he denies to have been filed by him. He also denied his signature at point A on the same.***

***.....I have filed a police complaint regarding obtaining my signatures on some blank papers. ..."***

22. 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, retirement 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.

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23. There is a prescribed procedure under Section 58 of The Industrial Disputes (Central) Rules, 1957 regarding the Memorandum of settlement. Furthermore, it is to be noted that in Section 2 (p) of The Industrial Disputes Act 1947 and Rule 58 of The Industrial Disputes ( Central ) Rules 1957 it has been specifically provided that in case of a settlement arrived otherwise than in the course of conciliation proceedings a copy of the same has to be sent to the authorities as mentioned in Rule 58 (4) of The Industrial Disputes (Central) Rules 1957. Rule 58(3) of the Industrial Disputes (Central) Rules 1957 provides that where a settlement is arrived at in the course of conciliation proceedings the Conciliation Officer shall send a report to Central Government together with a copy of memorandum of settlement signed by the parties to the dispute. Hence, the legislature has provided appropriate provisions for protecting poor workman from being forced to enter into settlement by requiring that a copy of settlement is to be sent to the Central Government even in case the settlement is arrived before the Conciliation Officer (who is an officer superior to Labour Inspector). The legislature has nowhere provided that in case the settlement is arrived in the presence of Labour Inspector then there is no requirement of compliance of provisions Rule 58(4) of The Industrial Disputes (Central) Rules 1957. It is also to be noted that the legislature has provided appropriate provision for safety of workman even in case a settlement is arrived during the course of conciliation proceedings by requiring a copy of the same being sent to Central Government under Rule 58(3) of the Industrial Disputes (Central) Rules, 1957.
24. While enacting Section 2 (p) of the ID Act 1947 and Rule 58 of the Industrial Disputes (Central) Rules 1957 the legislature was well aware that a poor workman may be forced or coerced to enter into settlement under the pressure or threat and on that account necessary provisions were made whereby it was directed that the appropriate authorities as provided in the said provisions, shall be informed about the settlements in order to prevent abuse of authority by the management or union or any officials of the government.
25. In Workmen of Delhi Cloth and General Mills Co. Ltd. v. Management of Delhi Cloth and General Mills Co. Ltd., 1970 Lab. IC 1470 it was held that the settlement has to be in compliance with the statutory provisions, as they are of a mandatory character. Hence, in view of Section 2 (p) of I.D. Act 1947 read with Rule 58 of Industrial Dispute ( Central) Rules 1957 a copy of settlement was required to be sent to the authorities as mentioned in Rule 58 (4) however, it has not been proved that any copy of the alleged settlement was ever sent to the authorities as mentioned in Rule 58 (4) of Industrial Dispute (Central ) Act. In view of decisions

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of our own Hon'ble High Court of in Om Prakash Sikka Vs. Presiding Officer , Labour Court another (Supra) the alleged settlement is inoperative.

26. In Om Prakash Sikka v. The Presiding Officer, Labour Court and Anr., 1983 (46) FLR 172, it was observed that it has been held in decided cases that where there is non - compliance with Rule 58(4) the settlement is invalid because the settlement has to be in strict compliance with the statutory provisions of Rule 58(4) and in such cases it cannot be contended that the copy sent to the Labour Commissioner was in full compliance with sub-rule (4) of Rule 58, inasmuch as a copy of the settlement has to be sent to the authorities named specified therein. It was held that where a copy is not sent to the authorities named in sub-rule (4), it must be held that the settlement is inoperative.
27. In the Case of Workmen of M/s. Delhi Cloth and General Mills v. Management of M/s. Delhi Cloth and General Mills Ltd., reported as 1970 Scr (2) 886, the Hon'ble Supreme Court has held: "(2) Rule, 28F(4) of the Industrial Disputes (Central) Rules 1957 made under S. 38 of the Industrial Disputes Act has full force of law of which judicial notice can be taken. This rule must be fully com-plied with if the settlement is to have a binding effect on all workmen." (896A).
28. 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.
29. The compliance with the Rule 58 (4) was mandatory and same view was also held in another case of the Management of Cooperative Stores Ltd.vs. Ved Prakash Bhambri reported as where it was reiterated that Rule 58 and Form H of Industrial Dispute(Central) Rules 1957 have to be strictly followed before the statement could be considered as valid.
30. This Tribunal is not able 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

  
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rulings relied on by the management on this aspect of resignation, do not attract to the present facts of the case.

31. Therefore, in view of the aforesaid discussion the management has failed to prove that workman had settled the matter by way of "Full & Final" Settlement. The onus to prove the ISSUE No.1 was on the management and same could not be discharged by the management. Thus this ISSUE No.1 is decided in favour of the workman and against the management.

**ISSUE No.2 : As per the terms of reference:**

32. In view of the discussion in the preceding paragraphs hereinabove it is to held that he management has illegally terminated the workmen-herein from their job. This issue No.2 is also decided in favour of the workmen and against the management.

**RELIEF**

33. 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. However, in view of the sealing of the management premises by MCD, reinstatement of the workman would not be an appropriate relief. He can be granted compensation. The judgment "Rameshwar Dayal And Presiding Officer, Labour Court No.VI, Delhi and Another, 2007IIILLJ 729" provides guidelines as to how such a case is to be dealt with. It was observed :

*"24.However, keeping in view the fact that in the case of Jaipur Development Authority ID NO.418/2006 (supra) also, in spite of coming to the conclusion that the provisions of Sections 25G and 25H of the Act had not been complied with and therefore the termination order was illegal and unjustified, the Supreme Court still held that reinstatement of the workman would not be the appropriate relief considering that he was only a daily rated workman, and that he was not appointed in accordance with the constitutional scheme of appointment, neither was his work of perennial nature, nor did he prove that when his services were terminated any person junior to him in the same category, had been retained.*

*Accordingly, payment of a lump sum compensation was deemed to be an appropriate remedy."*

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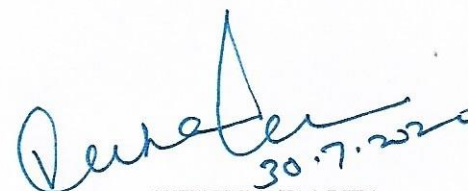
34. There are decisions of the Apex Court in support of "compensation in lieu of reinstatement" such as Incharge Officer and Another Vs. Shankar Shetty {(2010) 9 SCC 126} and Hari Nandan Prasad and Another v. Employer I/R To Management of Food Corporation of India and Another reported in (2010) 7 SCC 190.

35. The services of the workman Sh. Nand Kishore s/o sh. Munni Lal has been terminated illegally and / or unjustifiably by the management. As guided by the view taken by the Hon'ble High Court in Rameshwar Dayal and the judgment of the Hon'ble supreme Court, the management-herein is directed to pay to the workman Sh. Nand Kishore s/o sh. Munni Lal a lump sum amount of Rs.3,00,000/- (Rupees Three Lakh only) compensation in lieu of "reinstatement and back wages" within two months from today, failing which the workman-herein will be entitled to recover the said compensation amount from the management-herein along with an interest @ 15% per annum till its realization.

36. Reference answered accordingly in above terms/directions. Matter disposed of.

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.

Dated: 30.07.2020



(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 COURT COMPLEX, NEW DELHI**

**LIR NO.4382/2016**

INDUSTRIAL DISPUTE BETWEEN :-

**Sh. Nand Kishore s/o Sh. Munni Lal**

*through*

**DELHI OFFICES AND ESTABLISHMENT EMPLOYEES UNION  
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.....Workman

VERSUS

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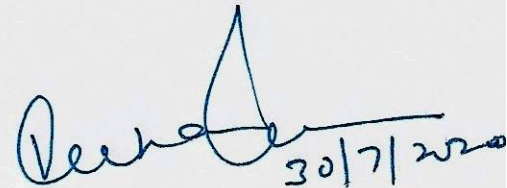
Present : Sh. Virender Kumar , AR of the workman through VC.

Sh. Sunil Kumar, AR of the management through VC.

Vide my separate detailed AWARD the award is passed in favour of the workman **Sh. Nand Kishore s/o Sh. Munni Lal**. A copy of the award be uploaded on the website of RADC. 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.

Announced in the open court.

Dated: 30-07-2020.



( VEENA RANI )

Presiding Officer Labour Court

Rouse Avenue Courts, New Delhi

Judge Code : DL0271