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. Sunil Sharma S/o Shri S.N. Sharma
***through* Municipal Employees Union (Regd),**
Aggarwal Bhawan, GT Road, Tis Hazari, Delhi-110054 .....Workman

VERSUS

Management of the Commissioner,
North Delhi Municipal corporation,
Dr. S.P. Mukherjee Civic Centre, New Delhi-110002 .....Management

Date of Institution : 29-04-2014
Date of Arguments : 22-07-2020 Throught VC
Date of Award : 31-07-2020 Through VC

AWARD

1. The Dy. Labour Commissioner (CD), Government of NCT of Delhi vide its order No. F.24(24)14/Lab./CD/139, dated 24-04-2014, 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. Sunil Sharma S/o Shri S.N. Sharma has 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 the joined the management **w.e.f. 06-01-1998** as a **Food Hygiene Beldar** as daily wager/muster roll worker and was being paid wages as fixed and revised from time to time under the Minimum Wages Act whereas his counter parts were getting their salary in proper pay scale and allowances. The workman was discharging his duties to the entire satisfaction of his superior and he has unblemished and uninterrupted record of services to his credit.

3. As per the claim on 13-12-2005, the workman-herein, was arrested by Anti Corruption Branch on the allegation of taking a bribe of Rs.300/- and consequently an FIR No:53/2005 was lodged against him and due to which he was not taken on job **w.e.f. 10-11-2006**. In the due course,

Veena 31/7/2020

after a trial the workman was acquitted by the court of Ms. Sangeta Dhingra Sehgal, The Special Judge, vide judgment dated 25-01-2012. Subsequently, after being acquitted, the workman approached the management for job but he was not taken back on job by the management. It is the case of the workman-herein that the termination of services of workman w.e.f. 10-11-2006 is totally illegal, bad, unjust and malafide as he was innocent and was falsely implicated in the aforesaid FIR case. The workman-herein prayed that an award may be passed in his favour thereby holding that he is entitled to be reinstated in service with continuity of service and full back wages with all consequential benefits thereof either monetary or otherwise along with the cost of the litigation.

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

4. The management filed a Written Statement and then the Amended Written Statement, which was allowed to be taken on record vide order dated 17-02-2017 and raised preliminary objection that the claimant has never been retrenched but he was disengaged on account of his involvement in illegal gratification/bribe matter and he was arrested by the Anti-Corruption Branch. No demand notice was served upon the management prior to raising of the present dispute as such claim is liable to be dismissed. It is further stated that the claimant was having no lien/right with the management, being purely a Daily Wager Muster Roll Employee and as such claimant cannot claim reinstatement on the basis of his acquittal in the Criminal Matter. Even otherwise the present dispute suffers from latches as the claimant was admittedly disengaged on 10-11-2006 and the present claim has been filed after a passage of eight years and as such claim is liable to be dismissed. The claim of the claimant is not maintainable as the claimant is not a workman as definded under Section 2(s) of the Industrial Dispute Act. Management further stated that the present claim of the workman is not maintainable as defined under section 2(s) of the I. D. Act. It is submitted that the claimant has already disengaged from the municipal services way back in the year 2006 as such admittedly there exists no relationship of employer-employee between the management and the claimant hence this court has no jurisdiction to adjudicate upon the present claim. The claimant is not covered within the definition of Section 2(s) of the I. D. Act. In their reply on merits, it is denied by the management that the counterparts/daily wager of workman were getting salary in proper pay scale as alleged. It is further denied that the claimant was discharging his duty to the satisfaction of the superior as alleged. It is stated that the claimant was acquitted on benefit of doubt as per judgment dated 05-01-2012. the integrity of the workman is doubtful. It is denied that he was innocent. Once the claimant was disengaged from muster roll he cannot be allowed to join until and unless any requirement is there with the management. It

is denied that the termination/disengagement of the claimant is illegal bad, unjust as alleged. It is further denied that the claimant is entitled for any difference of salaries as claimed. It is stated that the claimant was arrested by the anti Corruption branch on the charge of gratification and proper investigation was done by AC Branch, however, the claimant has concocted the story that he had approached the management any time as alleged. It is denied by the management that the termination/disengagement amount to unfair labour practice as alleged or that same is in violation of article 14, 16, 21 and 39 D of the Constitution as alleged. It is submitted that the claimant was a daily wager and no CCS or CCA rules are applicable on him. The management has denied all other allegations of the workman and prayed that claimant is not entitled for the relief as prayed in the claim.

REJOINDER OF THE CLAIMANT-WORKMAN:

5. In his rejoinder/amended rejoinder the workman has reiterated his averments made in the statement of claim and denied the contentions of the management.

6. From the pleadings of the parties the following issues were framed on 29-10-2014:-

   (1) Whether the claimant falls within the definition of workman under section 2 (s) of the Industrial Disputes Act ? OPW

   (2) As per terms of reference.

EVIDENCE OF THE WORKMAN:

7. 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 :

   a. Ex.WW1/1 is legal demand notice dt. 08-09-2012,

   b. Ex. WW1/2(OSR) is photocopy of postal receipt dt. 17-09-2012,

   c. Ex. WW1/3 (OSR) is photocopy of acknowledgement card,

   d. Ex. Ex. WW1/4(OSR) is photocopy of appointment letter dt. 31-12-1997,Ex.WW1/5(OSR) is photocopy of appointment letter dt. 08-01-1998,

   e. Ex. WW1/6 (OSR) is photocopy of certified copy of judgment dt. 24-01-2012 passed by Ms. Sangita Dhingra Sehgal, the then Special Judge, Anti Corruption Branch, Delhi,

   f. Ex. WW1/7 is photocopy of the letter of request of joining dt. 21-02-2012 therein citing the acquittal;

31/7/2020

g. Ex./ WW1/8 is photocopy of office order dt. 10-11-2006,

h. Ex. WW1/9 is photocopy of office order dated 20-12-1996,

i. Ex.WW1/10 (OSR) is photocopy of medical slip dated 09-06-2006 and

j. Ex. WW1/11 is photocopy of statement of claim filed before Conciliation Officer.

8. No other witness was examined by the workman and workman closed his evidence on 11.08.2017.

EVIDENCE OF THE MANAGEMENT:

9. The Management has examined Dr. Ashok Kumar Rawat, Municipal Health Officer, Civic Centre, 12th floor, North MCD, as M1W1, who tendered his evidence by way of affidavit which is Ex.M1W1/A bearing his signature at point A and B. He has also relied upon all the documents exhibited in his affidavit which are exhibited as Ex.M1W1/1 to Ex.M1W1/3 and the documents already exhibited by workman i.e. appointment letter of the workman dt. 08-01-1998 already Ex.WW1/5 and offer given to the claimant for the post of Food Hygiene Beldar by the management , which is already Ex.WW1/4. Copy of the disengagement letter of workman Ex. WW1/M1.The Management also did not examined any other witness and management evidence was closed by ARM Sh. Vivek Chandra on 14-10-2019.

10. On 22-07-2020, due to the prevailing situation of Covid-19, I have heard final argument on behalf of the workman and management through Video Conferencing. Perused the material on record. My findings on the issues are as under:-

ISSUE No.(1) :Whether the claimant falls within the definition of workman under section 2 (s) of the Industrial Disputes Act ? OPW

11. The onus to prove this ISSUE No.1 was upon the workman.

12. The concept of workman is central to the concept of an industrial dispute as an industrial dispute can be raised either by a "workman" or an "employer." Since the Industrial Disputes Act, 1947 (**"ID Act"**) is a piece of beneficial legislation, the courts have enlarged the scope and applicability of this Act by giving wide interpretation to the term "workman." Section 2(s) defines workman as any person (including an apprentice) **employed in any industry** to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory work**, for **hire or reward**, terms of employment be express or implied and includes any such **person who has**

been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. It excludes persons employed in army/Navy/Air Force/Police and those employed in *mainly managerial or administrative, supervisory capacity.*

13. As far as the status of the workman-herein is concerned the witness MW-1 has admitted in his cross-examination:

> ***"It is correct that the workman Sh. Sunil Sharma joined into the employment of the management w.e.f.6-1-1998 as beldar. Vol. As daily wager. It is correct that the salary of the workman was not paid every day but was paid after one month of his work. It is also correct that the workman was paid his salary as per minimum wages fixed and revised from time to time under the minimum wages Act for unskilled categories...***
>
> ***...It is correct that attendance of the workman was marked in the attendance register. It is also correct that the said attendance record is the authentic record in respect of attendance etc of the workman. It is correct that attendance record is maintained and preserved by the management.***
>
> ***...It is correct that the Beldar first taken in the employment as daily wager and then the management regularized their services according to the regularization policy of the management in phase manner. Vol. Subject to satisfactory work and conduct reports. There is nothing on record to show that the work and conduct of the workman from 1998 to 2005 was not satisfactory. It is correct that the similarly situated Beldars who joined the employment of the management in the year 1998 and 1999 stands regularized long time back. Vol. As per the policy..."***

14. The management has admitted the nature of the job of the workman-herein as that of "unskilled category". The Supreme Court has added assurance to what is even otherwise clear from the definition that "skilled or unskilled" only qualifies 'manual work and is not meant to specify other different and independent categories of work to do which a workman may be employed, in the following observations in Burmah Shell Oil Storage v. Burmah Shell Management {reported in 1971 AIR 922, 1971 SCR (2) 758} for an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman.

Deepak 31/7/2020

15. In "Management of Horticulture Department of Delhi Administration v. Trilok Chand & Anr. reported as 82(1999) DLT 747 after referring to a number of judgments of the Hon'ble Supreme Court, took the view that that having worked for more than 240 days continuously, such a person would clearly come within the definition of workman under Section 2(s) of the Act and held that the termination of the respondent workman therein without compliance with the provisions of Section 25F.

16. In "SH.BHOPAL Versus PRESIDING OFFICER, LABOUR COURT, & ANR" {Writ Petition (C) No.5989 /1999 Date of decision : 08.02.2007" it was held:

    "7. Having gone through the aforementioned case law and in the light of the facts and circumstances of the case there is no doubt that the petitioner comes within the definition of a 'workman' in terms of Section 2(s) of the Act. Once it is found that the petitioner comes within the definition of a `workman', and that he has rendered 240 days of continuous service in the year, then irrespective of whether he was a daily wager or not, the natural consequence thereof is the conclusion that the provisions of Section 25F of the Act were applicable to him and termination of his services without complying with the provisions of Section 25F was illegal."

17. In the case of L. Robert D'Souza Vs. Executive Engineer, Southern Railway and another reported in 1982 SCC (L&S) 124. In that case apex Court held that even the casual or seasonal workman who rendered continued service for one year or more could not be retrenched on such ground without complying with the requisition of Section 25-F of the Act. In another case entitled Rattan Singh Vs. Union of India . It was held by the Apex Court that provision of Section 25-F were applicable to termination of even a daily rated workman who had continuously served for requisite statutory minimum period for a year and termination of services of such a workman without complying with provisions of Section 25-F was illegal. To the same effect is the judgment of Supreme Court in the case of Samishta Dubey Vs. City Board, Etawah {1989 LLR 2160} and Municipal Corporation of Delhi Vs. Praveen Kumar Jain {1998 (8) SCC 468}.

18. In view of the facts & circumstances of the case and while weighing all the documentary / oral evidence including the admitted facts in the cross-examination the workman-herein is covered under the definition of "workman" as per S.2(s) I.D. Act.

19. The workman-herein has been able to discharge his onus thus the ISSUE No.1 is decided in favour of the workman-herein and against the management-MCD.

31/7/2020

ISSUE No.2 : ***"Whether the services of workman Sh. Sunil Sharma S/o Shri S.N. Sharma has 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 ?"***

20. The contention of the workman-herein is that he was arrested by Anti Corruption Branch on the allegation of taking a bribe of Rs.300/- and consequently an FIR No:53/2005 was lodged against him and due to which he was not taken on job **w.e.f. 10-11-2006.** In the due course, after a trial the workman was acquitted by the court of Ms. Sangeta Dhingra Sehgal, The Special Judge, vide judgment dated 25-01-2012. Subsequently, after being acquitted, the workman approached the management for job but he was not taken back on job by the management. It is the case of the workman-herein that the termination of services of workman w.e.f. 10-11-2006 is totally illegal, bad, unjust and malafide as he was innocent and was falsely implicated in the aforesaid FIR case.

21. The management on the other hand has asserted that though the claimant was acquitted it was an acquittal due to "benefit of doubt" and that the integrity of the workman remained doubtful. As per the management policy the CCS or CCA rules were not applicable to the workman-herein thus even after an acquittal the daily wager does not have a vested statutory right to reinstatement in service.

22. The workman was cross examined by Sh. Umesh Gupta, Authorized Representative of the management and during his cross examination the workman/WW1 has stated that in December 2005 a case was registered against him by Anti-Corruption Branch and he was arrested in the said case and at that time he was working on daily wages basis as Food Hygiene Belder. WW1 admitted that on account of the aforesaid case he was disengaged by the management on 10-11-2006 and order to this effect is Ex. WW1/M1. WW1 stated that he sent demand notice to the management in the year 2012 under the signature of Sh. Surinder Bhardwaj, General Secretary of Municipal Employees Union and same was sent by post. WW1 stated that he did not know whether this notice was served upon the management or not. WW1 denied the suggestion that after his acquittal in the said case in the year 2012 he was not taken back on duty by the management as there was no vacancy against which he was working earlier. WW1 further denied that he has filed Medical Slip Ex. WW1/10. It is stated by WW1 that nowadays he is unemployed and he is dependent upon his father. He has not applied anywhere for job since the year 2006. WW1 voluntarily deposed that ***"the department had told me that after my acquittal I would be taken back on duty ".*** WW1 stated that this was told by Dr. Lallan Ram Verma, Deputy Health Officer, Karol Bagh Zone in the year 2006. It is stated by WW1 that he does not remember the date and month when he was so told. WW1 denied that nobody has told him that after his acquittal he would be taken back on duty.

31/7/2020

23. The cross-examination of the workman-herein shows that the workman stood unshaken on his version. The FIR pertaining to the allegation of bribe was not denied. Rather the workman-herein has reiterated that he ought to have been reinstated after his acquittal and that his dismissal being referred to as 'disengagement' by the management was unjust and illegal. No due process was followed by the management. That's the crux of the case of the workman-herein. The management-herein disbanded with the services of the workman-herein through the Office Order dated: 10.11.2006 (Ex.WW-1/M1) the relevant portion which says :

   "Addl. Comm. (Health) vide its order dated 27.10.2006 has disband your services as Muster Roll Daily Wager Beldar on account of illegal gratification and arrest by the Anti Corruption Branch, GNCT Delhi on 13.12.2005. ..."

24. As far as the mode of dismissal from the service is concerned the MW-1 has admitted:

   "...It is correct that the name of the workman was deleted from the rolls of the management w.e.f. 13-12-2005. Vol. Because be was arrested by the Anti Corruption Branch....

   ...No notice or notice pay in lieu of notice either offered or paid to the workman by deleting his name. No service compensation / retrenchment compensation either offered or paid to workman ever..."

25. The workman-herein has further highlighted that no Memo was issued, no charge sheet was given and no enquiry was held by the management-MCD. This is revealed in the cross-examination of the witness MW-1 in the following words:

   "...No memo or charge sheet was given on the alleged charge of bribe. Vol. As per the terms and conditions there is no requirement of giving any memo or charge sheet for termination of service. As per the service condition in the engagement letter in case there is allegation of taking bribe by an employee there is no need to issue any memo of charge sheet. No Inquiry officer was appointed to look into the charges against the workman. No show cause letter was ever given to the workman before terminating his services on 13-12-2005...

26. As far as the service of demand notice etc. to the management is concerned the witness MW-1 has admitted in his cross-examination:

   "...It is correct the address of the management is correct on Ex.WW1/1 to Ex.WW1/3. It is also correct that Ex.WW1/3, the seal of the MCD is affixed as an acknowledgment. Ex. WW1/4, Ex. WW1/5 are the correct copies of officer orders..."

31/7/2020

It is correct that vide Ex.WW1/7 the workman submitted his joining report along with the judgment of the criminal court. Vol. The signatures are not readable. It is correct that the workman was approaching the management for duties after his acquittal in the year 2012. It is correct that despite repeated representations by the workman after his acquittal to the management neither his representations were considered nor any order was passed on him."

27. In M.C.D. vs Praveen Kumar Jain And Ors. {AIR 1999 SC 1540, (1998) IILLJ 674 SC, (1998) 9 SCC 468} the workman-therein was working as Non-Technical Staff (for short NTS) on muster-roll as daily-wager. In the year 1981 he was alleged to have committed misconduct by way of interpolation of his own name in the list of recommended employees for regularisation in service. After a preliminary enquiry the MCD-therein passed a discharge order against the workman-therein. The said discharge order simpliciter was set aside by the the Hon'ble Supreme Court while holding thus:

"...Unfortunately, for the appellant (MCD) the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of Respondent 1 (workman-therein) by way of a simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of penalty. This stand was obviously taken by the appellant because the order of simpliciter termination would have remained stillborn as Section 25F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that it was by way of penalty. If it was by way of penalty then at least a regular departmental enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against Respondent 1 and its acceptance by the disciplinary authority. Nothing of this son was done. There is neither the enquiry officer's report holding Respondent 1 guilty of charge which in fact was never framed against him nor is there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held Respondent 1 guilty of any charge of misconduct. It is also interesting to note that while challenging the award of the Labour Court in writ petition the appellant clearly stated in para 3 of the writ petition that since Respondent 1 and Shri Mahender Kumar were merely on casual engagement/muster-roll employees and were not regular employees of the petitioner-Corporation or that of DDA, they were not entitled to a

31/7/2020

departmental inquiry as is required for the regular employees of the petitioner-Corporation. As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental enquiry against Respondent 1. Consequently, the impugned order of termination would fail even on that ground. If it is a simpliciter discharge order it is violative of Section 25F of the Industrial Disputes Act and if it is a penalty order, as contended by the appellant, it would fail on merits as not having followed the procedure of departmental enquiry. In either view of the matter, the impugned order must be held to be rightly set aside by the Labour Court and the said decision was also rightly confirmed by the High Court."

28. In "MCD v. Praveen Kumar Jain" (above-cited) the workman was reinstated in the service and the said judgment answers all the contentions of the management/MCD-herein in favour of the workman-herein relating to the need of enquiry even in cases of ***casual engagement/ muster-roll employees.*** This judgment as relied upon by the workman-herein certainly comes to the rescue of the workman-herein.

29. In **"Raghubir Singh v. Gen. Manager, Haryana Roadways {CIVIL APPEAL NO. 8434 OF 2014 decided on 3rd Sept. 2014}** the appellant joined the Haryana Roadways as a conductor but was charged under Section 409 IPC in a criminal case at the instance of the Haryana roadways for alleged misappropriation of the amount collected from tickets and not depositing the cash in relation to the same in time. The appellant was arrested by the Jurisdictional police and sent to judicial custody. The services of the employee-therein were terminated by the General Manager, Haryana Roadways, Hissar. However, the employee was given an oral assurance by the department that he will be reinstated to the post after his acquittal by the Court. In the due course after the trial, the employee-therein was acquitted by the court of law and the said employee reported to join his duty but the department informed him that his services stood terminated. The employee-therein initiated proceedings as per the I.D. Act consequent upon which the reference was made under S.10 I.D. Act to the Labour Court and the AWARD in favour of the said employee was passed by the Labour Court. The matter went upto the Hon'ble Supreme Court which found favour with the workman-therein on the aspect of limitation (delay) as well as on the aspect of 'requirement of enquiry'. The judgment in **"Ratan Chandra Sammanta and Ors. v. Union of India and Ors." {1993 AIR SCW 2214}** was referred to wherein it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. In the Raghubir's case the following was thus held:

"The appellant is a workman in terms of Section 2(s) of the Act, therefore, Model Standing Orders framed under the provisions of Industrial Employment (Standing Orders) Act of 1946 and the principles of natural justice are required to be followed by the respondent for initiating disciplinary proceedings and taking disciplinary action against the workman. Since the respondents have not followed the procedure laid down therein from the beginning till the passing of the order of termination, the same is vitiated in law and hence, liable to be set aside."

26. In addition to the above findings and reasons, the case of Calcutta Dock Labour Board and Ors. v. Jaffar Imam and Ors {(1966 AIR 282, 1965 SCR (3) 453} is aptly applicable to the fact situation of the case on hand. In the aforesaid case, the respondents had been detained under the Preventive Detention Act, 1950. Thereafter, they were terminated by the appellants without being given a reasonable opportunity to show cause as to why they shouldn't be terminated. It was held by this Court as follows:-

> *"13.Even in regard to its employees who may have been detained under the Act, if after their release the appellant wanted to take disciplinary action against them on the ground that they were guilty of misconduct, it was absolutely essential that the appellant should have held a proper enquiry. At this enquiry, reasonable opportunity should have been given to the respondents to show cause and before reaching its conclusion, the appellant was bound to lead evidence against the respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the appellant by clause 36(3) of the Scheme of 1951 and cl. 45(6) of the Scheme of 1956. It appears that in the present enquiry, the respondents were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded. That being so, we feel no hesitation in holding that the Court of Appeal was perfectly right in setting aside the respective orders passed by the two leaned single Judges when they dismissed the three writ petitions filed, by the respondents.*

30. The case of Raghubir Singh v. Haryana Roadways as relied upon by the workman-herein certainly comes to the rescue of the workman-herein.

31/7/2020

31. In "H.D. Singh v. Reserve Bank Of India {reported in 1986 AIR 132, 1985 SCR Supl. (2) 842} the appellant was a tikka mazdoor-person who helped the Examiners of Coins and notes in the RBI. The Hon'ble Supreme Court deprecated the practice of assigning work to tikka-mazdoor on arbitrary basis and held:

    "The confidential circular directing the officers that workmen like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the appellant is a badli worker, have to be characterised as unfair labour practice. The 5th Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in Section 2(ra). Item 10 reads as follows:

    > *"To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."*

    We have no option but to observe that the bank, in this case, has indulged in methods amounting to unfair labour practice. The plea that the appellant was a badli worker also has to fail.

    ...

    11. We hold that the appellant is entitled to succeed. We set aside the order of the Industrial Tribunal and hold that the striking off the name of the appellant from List II amounted to retrenchment under Section 2(oo) of the Act and was in violation of Section 25-F. We direct the first respondent-bank to enlist the appellant as a regular employee, as Tikka Mazdoor, to reinstate him and pay him his back wages up-to-date..."

32. The case of H.D. Singh v. RBI as relied upon by the workman-herein certainly comes to the rescue of the workman-herein. There is no force in the contentions of the management-MCD that the acquittal of the workman-herein is eclipsed due to "benefit of doubt". In fact the judgment says there was no evidence against the workman-herein. Be that as it may. An acquittal is an acquittal.

33. In view of the facts & circumstances of the case and while weighing all the documentary / oral evidence including the admitted facts in the cross-examination the termination of the service of the workman-herein is hereby held to be unjustified / illegal / arbitrary.

34. The workman-herein has been able to discharge his onus thus the ISSUE No.2 is decided in favour of the workman-herein and against the management-MCD.

31/7/2020

RELIEF:

35. As far as the aspect of gainful employment of the workman-herein is concerned the witness MW-1 has admitted in cross-examination :

> ***"....The management does not have any evidence or material to show that the workman is gainfully employed elsewhere after 13-12-2005. It is correct that vide Ex.WW1/6 the workman was acquitted by the competent court in the charges of bribe. It is correct that the workman has worked continuously and uninterrupted from 6-1-98 to 13-12-2005. Vol. As per the sanctions of the management..."***

36. 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. The term "reinstatement" has not been elucidated in the I.D. Act 947. 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.

37. 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."*

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

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

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

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

31/7/2020

39. While reiterating that in certain circumstances reinstatement being the normal rule, it should be followed with full back wages, the Division Bench of Hon'ble Delhi High Court held in the judgment "Badshah Singh vs Delhi Jal Board { LPA 604/2014 decided on 27th August, 2019}:

"19. The question then arises is whether the Appellant would be entitled to full back wages. In Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80, the Supreme Court inter-alia observed as under:

> *"Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the Apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them."*

31/7/2020

DIRECTIONS TO THE MANAGEMENT - MCD

40. The RELIEF is decided in favour of the workman and against the management-MCD with the following directions :

a. **Relief of reinstatement – granted with full back wages w.e.f. 10-11-2006.**

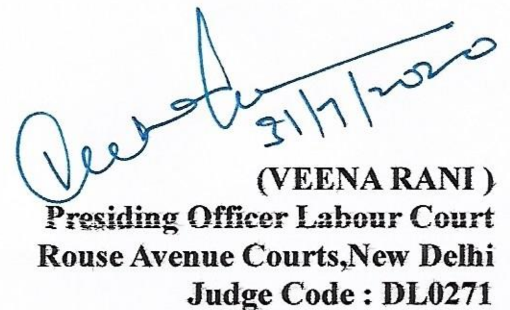
b. **Relief of the continuity of service along with all the other benefits is also granted / ordered.**

c. **Litigation Cost is also awarded.**

41. 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: 31.07.2020



(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. Sunil Sharma S/o Shri S.N. Sharma
***through* Municipal Employees Union (Regd),**
Aggarwal Bhawan, GT Road, Tis Hazari,
Delhi-110054 .....Workman

VERSUS

Management of the Commissioner,
North Delhi Municipal corporation,
Dr. S.P. Mukherjee Civic Centre,
New Delhi-110002 .....Management

31-07-2020

Present : Sh. Rajiv Aggarwal, AR of the workman through VC.

Sh. Vivek Chandra, AR of the management through VC.

Vide my separate detailed AWARD the award is passed in favour of workman Sh. Sunil Sharma S/o Shri S.N. Sharma . 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: 31-07-2020

(VEENA RANI)

Presiding Officer Labour Court

Rouse Avenue Courts, New Delhi

Judge Code : DL0271