



2025:DHC:6109



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 22.07.2025***

+ W.P.(C) 2728/2021

MANAGEMENT OF M/S ACFOLI INCPetitioner

Through: Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advocates.

versus

SURENDER NARAYAN SINGHRespondent

Through: Mr. Sumit Kumar, Advocate.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Article 226 of the Constitution of India to challenge an Award dated 31.10.2018 passed by the learned Presiding Officer, Labour Court, South-West District, Dwarka Courts, New Delhi in LIR No. 2194/2016 captioned ***Sh. Surender Narayan Singh v. Management of M/s Acfolinc*** [hereinafter referred to as "Impugned Award"]. By the Impugned Award, the learned Labour Court has awarded a lump-sum compensation in the sum of Rs.2.5 lacs to the Respondent/Workman along with default interest of 8% p.a.

2. The principal challenge that has been raised by the learned Counsel for the Petitioner/firm is on the fact that the provisions of Chapter V-B of Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"] does not apply to the Petitioner/firm and that no issue with respect to the same was



made by the Respondent/Workman before the learned Labour Court, despite which a detailed finding of “closure” has been given by the learned Labour Court.

3. Learned Counsel for the Petitioner submits that the Petitioner/firm came into existence on 01.04.1996, however on account of unavoidable reasons and pursuant to an order passed by the Haryana State Pollution Control Board, Panchkula on 28.07.2008, the Petitioner/firm had to be closed with effect from 01.08.2008. It is contended that the intimation of closure was sent to the concerned labour department at Haryana as well. Reliance is placed by the Petitioner/firm on the closure order dated 28.07.2008 in this behalf.

4. The Petitioner/firm also relies on documents of closure including surrendering of its registration as well as VAT/SCT by the Petitioner/firm which was done subsequently. Learned Counsel for the Petitioner/firm submits that a dispute was raised by the Respondent/Workman before the learned Labour Court by filing a statement of claim and stating that he had been working with the Petitioner/firm as a field worker and was illegally dismissed on 01.01.2013.

5. Learned Counsel for the Petitioner/firm submits that the only reason that the learned Labour Court has given for the finding for the termination of the Respondent/Workman was the closure of the Petitioner/firm without prior permission from the appropriate Government and non-compliance of other requisite formalities as are set out in Chapter V-B of the ID Act. It is the case of the Petitioner/firm that these provisions do not apply to the



Petitioner/firm, however in any event, the Petitioner/firm was not given an opportunity to establish this fact before the learned Labour Court or to establish that the termination was not illegal and contrary to law.

6. Lastly, it is contended by learned Counsel for the Petitioner/firm that one of the pre-requisites of Chapter V-B and Section 25K of the ID Act is that number of workmen in an establishment should be 100 or more. However, the Petitioner/firm was not an establishment of more than 100 workmen employed at a time and thus the provision cannot be made applicable. Learned Counsel for the Petitioner/firm thus submits that the finding of the Impugned Award *qua* the Award of lump-sum compensation is not in accordance with law.

7. Learned Counsel for the Respondent/Workman submits that the Workman has made a claim not based on working at any factory or establishment which was shut down in 2008 but has filed his statement of claim based on his job as a field boy working for the Petitioner/firm at his office at New Friends Colony, New Delhi. He further submits that some of the documents that have been relied upon show the address of the Petitioner/firm at Noida, Uttar Pradesh, however the documents do show the existence of an office in New Friends Colony, New Delhi as well.

8. A review of the Impugned Order shows that the terms of reference that were set out were the following:

“Whether the services of Sh. Surender Narayan Singh S/o Late Sh. Narayan Singh have been terminated illegally and/or unjustifiably by the management; if so, to what relief is he entitled and what directions are necessary in this respect?”



9. The learned Labour Court however has raised an issue with respect to the closure of the management with effect from 01.08.2008 and its effect, and has thereafter proceeded to adjudicate on this issue. The learned Labour Court has discussed the provisions of Chapter V-B of the ID Act and the definition of closure and relying on the law as settled in this behalf has given a finding that the management has been unable to show as to whether it had obtained valid permission for closure of the management. The relevant extract in this behalf is set out below:

"The term "closure" is defined under Section 2(cc) of the I.D. Act. It means the permanent closing down of a place of employment or part thereof. It is no doubt true that an industrial establishment covered by Chapter V-B, in case of retrenchment or closure in the absence of seeking prior permission from the competent authority for effecting retrenchment or closure, the workmen are entitled for wages as if they are never retrenched or sent out on closure. In those cases, the Supreme Court had even gone to the extent to say that the workmen need not even raise a dispute and can straightaway claim wages as provided under the Act in the light of the judgment reported in Fabril Gasosa v. Labour Commissioner and others reported in 1997 (3) SCC 150. If it is held that it was not an industrial establishment covered by Chapter V-B, then the question will be in the absence of a closure held to be invalid, an individual dispute claiming to be non-employment will not arise. In essence in case of closure, there cannot be individual non-employment because the entire work force is sent out of service on account of closure. Therefore, unless and until, a closure effected by an employer was held to be invalid, the workmen cannot individually or collaterally attack the reason for closure. The Hon'ble Supreme Court in its decision in Hondaram Ramchandra Vs. Yeshwant Mahadev Kadam (Dead) through LRs reported in (2007) 14 SCC 277 has held that if an undertaking is closed down, the only relief that workmen can get is compensation in terms of Section 25FFF of the I.D. Act.

In the present case the management witness MW-1 has stated that Sh. Ashok Rajnath was one of the partners of the management but he did not know whether the management was earlier running in the name and style of M/s Deepak Mills as it was a matter of record. The said witness has also identified the signature of Sh. Ashok Rajnath who had his personal office at 17 Community Centre New Friends Colony Delhi. The management witnesses MW-3 (Sh. Rajendar Pal Singh, Sr. SSA EPFO, Karnal,



Haryana); MW-4 (Sh. Lalit Narayan Prasad, SSA EPFO NOIDA UP) AND ma-5 (Sh. Manoj Kumar, Branch Manager ESI Office Panipat Haryana) have all admitted that it was the management who used to deposit the forms of the workman with the said authorities. **However, the management has not been able to show whether it had obtained valid permission for the closure of the management.**

In *Oswal Agro Furane Ltd., and another vs. Oswal Agra Furane Workers Union and others* reported in 2005 (1) LLJ 1117 it has been held:

"14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provide for conditions precedent to retrenchment; Section 25-0 speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character"

[Emphasis supplied]

10. The learned Labour Court has thereafter reached a finding that any industrial establishment covered under Chapter V-B of the ID Act, in the case of retrenchment or closure, is required to make payment of wages to a workman affected since he is removed from his job suddenly, and the closure or retrenchment is without prior permission from the Competent Authority. Thus, a finding has been given in favour of the Respondent/Workman in view of the fact that no permission for closure by the Petitioner/firm was sought, in the following terms:

"It is no doubt true that an industrial establishment covered by Chapter V-B, in case of retrenchment or closure in the absence of seeking prior permission from the competent authority for effecting retrenchment or closure, the workmen' are entitled for wages as if they are never retrenched or sent out on closure. In those cases, the Supreme Court had even gone to the extent to say that the workmen need not even raise a dispute and can straightaway claim wages as provided under the Act in the light of the judgment reported in *Fabril Gasosa v. Labour Commissioner*



and others reported in 1997 (3) SCC 150.

The Supreme Court further in its decision in Hondaram Ramchandra Vs. Yeshwant Mahadev Kadam (Dead) through LRs reported in (2007) 14 scc 277 has held that if an undertaking is closed down, the only relief that workmen can get is compensation in terms of Section 25FFF of the I.D. Act. It is a settled principle of law that a workman continues to be in service of the management if the closure is an 'illegal closure'.

Keeping in view the facts / circumstances / evidence of the case the issue regarding the closure of the factory is decided in favour of the workman and against the management.

19. **ISSUE NO:3**

AS PER TERMS OF REFERENCE : WHETHER THE SERVICES OF THE WORKMAN-HEREIN HAVE BEEN TERMINATED ILLEGALLY AND / OR UNJUSTIFIABLY BY THE MANAGEMENT AND IF SO. TO WHAT RELIEF IS HE ENTITLED TO AND WHAT DIRECTIONS ARE NECESSARY IN THIS RESPECT?

Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly. The hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, is the same.

The management-herein has not followed any procedure while closing the premises. A wrongful closure lead to the wrongful termination of the workman-herein. No compensation were given or even offered by the management-herein. There is no written intimation to the workman. The management evidence reveals a inconsistent stand vis-a-vis the 'resignation' of the workman. The termination of the services of the workman is totally illegal and unjustified.

[Emphasis supplied]

11. The learned Labour Court has also found that since no procedure was followed while closing the firm, the Workman was wrongfully terminated and has thus held him entitled to lump-sum compensation in the sum of Rs.2.5 lacs.

12. It is also apposite to set out the provisions of Chapter V-B, Section



25K and 25L of the ID Act below:

“25K. Application of Chapter VB.—(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25L. Definitions. – For the purposes of this Chapter, -

(a) **“industrial establishment” means** –

(i) **a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);**

(ii) **a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or**

(iii) **a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);**

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2, -

(i) *in relation to any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or*

(ii) *in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government.*

[Emphasis Supplied]

12.1 These provisions show firstly that they would apply only to an industrial establishment which is not carrying out work which is seasonal in character and which has more than 100 workmen being employed in such an establishment on average per working day for the preceding 12 months. It is the case of the Petitioner/firm that whether or not the Petitioner/firm qualified as an industrial establishment as per the definitions as set out in Section 25L(a) read with Section 25K of the ID Act, would require evidence to be led.



12.2 The Supreme Court in *S.G. Chemical and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited and Anr.*¹ held that to ascertain whether an establishment is an industrial establishment, is essentially a question of fact which is to be ascertained from the evidence led before the Industrial Court. The relevant extract of *S.G. Chemical* case is set out herein below:

“17. What now falls to be ascertained is whether the undertaking of the Company, namely, the Churchgate division, formed part of the industrial establishment of the Company, namely, the Trombay factory, so as to constitute the Trombay factory and the Churchgate division one establishment. If they did and the total strength of the workmen employed in the Churchgate division and at the Trombay factory was one hundred or more, then Section 25-O would apply. If they do not, then the section which would apply would be Section 25-FFA. This is a question of fact to be ascertained from the evidence led before the Industrial Court...”

[Emphasis Supplied]

13. Concededly, no evidence has been led by the either party. In fact, the terms of reference show that the only issue that was raised was with regard to illegal or unjustified termination of the Respondent.

14. In view of the foregoing discussions, the Impugned Award cannot be sustained and is accordingly set aside. The matter is remanded to the learned Labour Court.

15. The parties shall appear before the learned Labour Court on 02.08.2025.

15.1 In view of the pendency of this dispute *inter se* the parties, the learned Labour Court is requested to decide the reference as expeditiously as

¹ (1986) 2 SCC 624



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possible.

16. The amount that has been deposited by the Petitioner/firm in terms of the order of this Court shall remain deposited and be subject to the outcome of the proceedings of the learned Labour Court.

17. It is clarified that this Court has not examined the matter on merits. The rights and contentions of both parties are left open to be agitated before the learned Labour Court in accordance with law.

18. The Petition is disposed of in the foregoing terms.

19. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 22, 2025/pa/ha