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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 234/2020

SENTINELS SECURITY (P) LTD.Appellant

Through: Mr. Pradeep Pandey and
Mr. Amod K. Advs.

versus

SUDHA SINGHRespondent

Through: Mr. Jawahar Raja, Ms. L.
Gangmei, Ms. Meghna De and Ms. Surbhi
Bagga, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT(ORAL)

% **10.02.2025**

AJAY DIGPAUL, J.

1. The appellant is a security Agency Company engaged in the employment of security guards across residential, commercial and industrial establishments.

2. The respondent entered into the employment of the Appellant w.e.f. 01.03.2009 as a lady security guard.

3. During the course of her employment, the Respondent was accorded recognition for her performance and was awarded a Certificate of Appreciation and Certificate of Merit, in the year 2010-2012. Additionally, she was duly registered as a beneficiary under the



Employees' State Insurance¹ scheme for the period 2009-2010.

4. It is the case of the Respondent that her services were terminated by the Appellant on 15.03.2014. However, no formal written communication regarding the said termination was issued to the her.

5. Aggrieved by the alleged termination, the Respondent issued a legal demand notice dated 13.10.2014 to the Appellant company, seeking reinstatement and payment of wages for the period 01.02.2014 to 15.03.2014.

6. The Respondent subsequently initiated conciliation proceedings before the Labour Court. During the pendency of the said proceedings, the Labour Officer directed the management to reinstate the Respondent. In compliance with this direction, the Appellant company issued a movement order dated 23.02.2015, assigning the Respondent to duties at a shop namely 'M/s. Chunmun', Sector-12, Faridabad, Haryana. On reaching the place of duty, the Respondent was denied reinstatement as she was not assigned duties.

7. The respondent, on 01.04.2015 submitted a letter to the Labour Officer, stating that she had been denied duty at the assigned establishment. She requested that a reference order be issued in the matter.

8. Pursuant to the said representation, the dispute was referred for adjudication before the Labour Court I.D.No. 6662/2016, vide Order

¹ "ESI" hereinafter



dated 08.04.2015. The terms of reference for adjudication referred to in the impugned order were:

“Whether the services of workman Smt. Sudha Singh have been terminated illegally and/or unjustifiable by the Management; & if so, what relief is she entitled?”

9. Upon consideration of the pleadings and evidence adduced by the parties, the Labour Court, vide its Award dated 03.08.2019, directed the reinstatement of the Respondent along with full back wages. The rationale underlying the said conclusion is elaborated in paras 17 to 31 of the Award, which is reproduced hereunder:

“xxx xxx xxx xxx

PART-F
FINDINGS/CONCLUSION

17. *After considering the claim, reply, documents and the evidence led on record, the issue wise decision of the court is as under:-*

ISSUE No.1: Whether the workperson was not the regular employee in terms of section 25B of ID Act? OPM

18. *The present issue has been framed as the management has taken a stand to the effect that the claimant joined the management on 01.02.2014 instead of 01.03.2009 as claimed by the claimant.*

19. *The management has sought to place reliance upon appointment letter etc. bearing the said date of 01.02.2014 w.r.t. the claimant.*

20. *However, as discussed in Part D and E above, the management’s witness MW1 has admitted correctness of certificate of appreciation and certificate of merit issued by the management to the claimant in the year 2010 and 2012 exhibited as Ex. MW1/W2 and Ex. MW1/W3 respectively as well as admitted genuineness of ESI registration certificate of the claimant as Ex. MW1/W1.*

21. *Accordingly, by virtue of said Ex. MW1/W2 and Ex.*



MW1/W3 there remains no doubt that the claimant was employed with the management even in the year 2010 and hence, the stand taken by the management of the claimant having joined it in 2014 stand demolished but rather the stand taken by the claimant that though she joined the management on 01.03.2009 but appointment letter was issued later on bearing the prospective date of 01.02.2014 stand proved in view of the said exhibits.

22. *In these circumstances, as the claimant is held to be an employee of the management since 01.03.2009, second defence taken by the management that she having allegedly left the job on 15.03.2014 and thereby did not complete 240 days of continuous service in the immediate preceding year prior to the date of alleged termination/abandonment, also stand demolished.*

23. *Issue no.1 is accordingly, held in favour of the claimant holding that she was a regular employee of the management in terms of Section 25B of the Industrial Disputes Act.*

ISSUE No.2 : Whether the workperson unauthorizedly absented herself from the service w.e.f. 15.03.2014? OPM

24. *As per the management the claimant herself absented from duties w.e.f. 15.03.2014.*

25. *However, in view of the decision arrived at via issue no.1 whereby the court has held that the management has not come to the court with clean hands and has told a lie by fabricating the documents viz. appointment letter etc of the claimant showing her to be an employee since 2014, in contradiction to the actual date of employment as of 01.03.2009, the stand taken by the management in this respect also cannot be believed coupled with the fact that MW1 during the course of his cross examination has also admitted that neither any charge sheet nor any domestic enquiry was issued/initiated against the claimant w.r.t. her so called misconduct of abandoning the job and accordingly, this issue is decided in favour of the claimant.*

ISSUE No.3: Whether the services of the workperson has been terminated illegally and/or unjustifiably by the management; and if so, to what relief is she entitled? OPW.

26. *In view of the outcome of issue no.2, the court has no hesitation to hold that services of the claimant stand terminated illegally and unjustifiably by the management without following due process of law.*



27. *Issue no. 3 is accordingly, decided in favour of the claimant.*

ISSUE No.4: RELIEF

28. *In view of the outcome of issue no.3, the claimant is held entitled to the relief of reinstatement with full backwages at the rate of minimum wages as applicable in the case of a skilled worker from time to time if the actual wages are lower than that and in case the actual wages are higher than that, at the rate of actual wages, along with continuity of services and all other consequential benefits.*

29. *In case the management fails to give effect to the award within 30 days from the date of publication of the same, claimant is also entitled to simple interest @ 9% p.a. on the amount payable to her till the date the same is actually paid.*

30. *Reference answered accordingly.*

31. *Let copy of the award be sent to the appropriate Govt for its publication as per rules.*

File be consigned to record room.”

10. Aggrieved by the Award dated 03.08.2019 passed by the Labour Court, the Appellant herein preferred W.P.(C) No. 1905/2020 before the learned Single Judge under Article 226 of the Constitution of India, challenging the findings rendered therein.

11. In the said writ petition, the recital of facts by the Appellant were that the Respondent abandoned her services and stopped reporting for duty w.e.f. 30.11.2013, it was further asserted that on 20.01.2014, the Respondent, in order to settle her final dues, tendered her resignation, which was duly accepted, and all outstanding payments were cleared. Subsequently, the Respondent sought re-employment with the Appellant, which, considering her past



conduct and work performance, engaged her again w.e.f. 01.02.2014. However, after working for a brief period, the Respondent allegedly abandoned her duties once more. The Appellant further contended that since the Respondent had not completed 240 days of continuous service, she was not entitled to raise an industrial dispute before the Labour Court.

12. The learned Single Judge, after considering the submissions of the parties, dismissed the writ petition vide order dated 19.02.2020 which is reproduced thus:

“8. According to the respondent the aforesaid was a case of retrenchment and not of abandonment of service. Whereas, the petitioner insists that it was a case of abandonment. Be that as it may, if the abandonment of service is not proven as sought to be done hereinabove, there would be no cause for striking her name from the muster roll. But if the name was struck from the muster roll, then it could be done only in terms of rules governing retrenchment, which evidently too was not done.

9. In view of above facts, there is no reason to interfere in the impugned order.

10. The petition is without merit and is accordingly, dismissed.”

13. The present appeal has been instituted assailing the aforesaid order dated 19.02.2020 passed by the learned Single Judge.

14. After perusal of the material on record and having heard Mr. Jawahar Raja, learned Counsel for the respondent, we are of the opinion that this appeal has failed for the following reasons:

- i. Before the learned Single Judge, the appellant specifically stated that it was not agreed with the reinstatement of the respondent and was only challenging



the continuity of service granted to the respondent by the learned Labour Court.

- ii. This challenge of the appellant has been repelled by the learned Single Judge on two counts.

15. The learned Single Judge notes that the first argument of the appellant, which was that the respondent had resigned from service, had not been taken before the learned Labour Court and was being advanced for the first time before the learned Single Judge. Besides, the learned Single Judge has noted that the appeal could not be accepted as the respondent had been granted a certification of appreciation and a certificate of merit in 2010-12, both of which had been exhibited before the learned Labour Court as M1/W2 and M1/W3.

16. Moreover, the respondent was registered as an ESI² beneficiary in the year 2009-2010.

17. Thus, for the reason that the appellant had never raised the issue of resignation by the respondent from service before the learned Labour Court as also because the said plea was contrary to the material on record, the learned Single Judge has not accepted this argument.

18. The appellant had, thereafter, sought to contend before the



learned Single Judge that the respondent's name had been struck off from the records of the appellant with effect from 15 March 2014.

19. In this connection, the learned Single Judge has noted the deposition of MW1 Mr. Ashok Kumar Chaudhary who, in cross-examination, stated that as the respondent's services had not been terminated, no question of issuing any notice or payment of any amount in view thereof arose.

20. The learned Single Judge has noted that termination of the respondent in such circumstances would amount to retrenchment within the meaning of Clause (oo) of Section 2 of the Industrial Disputes Act, 1947.

21. The learned Single Judge has further relied on the following paragraph from the judgment of the Supreme Court in *H.D. Singh v Reserve Bank of India*³, to hold that such a striking off of the name of the respondent from the rolls of the appellant would constitute retrenchment.

“9. It is clear from the pleadings and from the documents noted above how the respondent Bank managed to get rid of the appellant. The disclosures made in the confidential circular make our task easy in holding that the bank was determined to adopt methods to terminate the services of the employees like the appellant. The appellant was not told that he would be struck off the rolls if he passed the matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The case of the bank is that he was orally informed that his name has been struck off. Striking off the

³ AIR 1986 SC 132



*name of a workman from the rolls by the employer amounts to "termination of service" and such termination is retrenchment within the meaning of Section 2(oo) of the Act if effected in violation of the mandatory provision contained in Section 25-F, and is invalid. In this case the facts need only to be stated to hold that the petitioner's name had been struck off the list contrary to the mandate contained in Section 25-F. This Court has held in **Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee**⁴ that striking off the name from the rolls by the management is retrenchment within the meaning of Section 2 (oo) of the Act. While reading Sections 25-F, 25-B and Section 2(oo), Krishna Iyer, J. in **State Bank of India v.N. Sundara Money**⁵ has observed that the words "for any reason whatsoever" occurring in Section 2(oo) are very wide and almost admitting of no exception. It was made clear that a comprehensive definition has to be effectuated to protect the weak against the strong in construing the ambit of the words contained in Section 2(oo). Pithily he observed that "without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment, at the time of retrenchment, of compensation computed as prescribed therein read with Section 25-B(2)".*

22. In as much as the necessary requirements of Section 25-F of the ID Act had not been followed before striking off the name of the respondent from the rolls of the appellant, the learned Single Judge has observed that the striking off was vitiated in law.

23. The sequitur, as the learned Single Judge has correctly observed, could only be that the respondent would be treated as continuing in the service of the appellant.

24. As such, the challenge, by the appellant, to the award of the learned Labour Court, to the extent it granted the respondent continuity of service, has been repelled by the learned Single Judge.

⁴ (1977) 4 SCC 415

⁵ (1976) 1 SCC 822



25. We, from the record, do not see any jurisdictional error or material infirmity in the judgment of the learned Single Judge, as could justify interference in appeal.

26. The LPA is, accordingly, dismissed.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

FEBRUARY 10, 2025/AS

Click here to check corrigendum, if any