2025:DHC:10109

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

Reserved on: <u>19.08.2025</u>
Pronounced on:<u>17.11.2025</u>

\+ W.P.(C) 501/2008

M/S AG'S WELFARE FUNDS .....Petitioner

Through: Mr. N.S. Dalal, Mr. J.B. Mudgil, Advs.

versus

S.O.ROHILLA & ANR .....Respondents

Through: Mr.Santosh Kumar Pandey, Ms. B. Naaz Jain, Advs.

\+ W.P.(C) 1616/2008

S.O.ROHILLA .....Petitioner

Through: Mr.Santosh Kumar Pandey, Ms. B. Naaz Jain, Advs.

versus

ADJUTANT GENERAL WELFARE FUNDS .....Respondent

Through: Mr. N.S. Dalal, Mr. J.B. Mudgil, Advs.

CORAM:
HON'BLE MS. JUSTICE RENU BHATNAGAR

<u>J U D G M E N T</u>

<u>RENU BHATNAGAR, J.</u>

1. The instant, W.P. (C) No.501/2008&W.P. (C) No.1616/2008 are two Cross Writ Petitions filed by the parties invoking the extraordinary jurisdiction of this Court under Article 226 read with Article 227 of the Constitution of India, challenging the same award dated 29.09.2007passed by the learned Labour Court, Fast Track XXI, Karkardooma Court , New Delhi (hereinafter referred as 'Labour Court') in the Industrial Dispute ('ID') No. 215/2006/96 titled ***'SO***

Rohila v. The Management of the AG's Welfare Funds.'. By the impugned Award, Labour Court answered the reference in favour of Workman holding that the termination of Workman/S.O. Rohilla as illegal and granted a lump-sum compensation of Rs.50,000/- payable to him within the period of three months, failing which the management had to pay interest at the rate of 18% per annum.

2. The management/Adjutant General Welfare Funds (hereinafter referred to 'AGWF') has challenged the Award in so far as the Award holds that the workman was terminated illegally and was awarded lump-sum compensation of Rs. 50,000/-,whereas the workman S.O. Rohillahas challenged the Award claiming that the Award should not have been restricted to Rs. 50,000/- as lump-sum compensation and he should have been granted reinstatement.

<u>FACTS OF THE CASE</u>

3. The relevant facts for adjudication of these cross-petitions are the same. The Workmen, Shri S.O. Rohilla, is an ex-serviceman, who retired from the Indian Army with the honorary rank of Captain. On 16.01.1989, he was appointed as an **Accounts Clerk** with the management/AGWF. His appointment was initially on probation and thereafter governed by the *adjutant general welfare funds Terms and Conditions of Service Rules, 1990 (hereinafter referred to as, 'Service Rules, 1990')*, which envisaged contractual engagement for fixed terms of three years, subject to renewal at the discretion of the appointing authority.

4. Pursuant thereto, vide letter dated 10.06.1993, the workmen's appointment was confirmed ex-post facto, for the contractual period commencing from 01.07.1990 to 30.06.1993. Upon expiry of the said period, his services were not renewed and his engagement came to an end, on 30.06.1993

5. Aggrieved, the workman raised an industrial dispute. He alleged that his appointment was in substance of a regular nature, and that the option of accepting the 1990 Rules had been obtained from him under duress. It was his case that cessation of service on 30.06.1993 amounted to illegal termination in violation of Sections 25F and 25N of the Industrial Disputes Act, 1947, and that he was entitled to reinstatement with continuity of service and back wages.

6. The stand of the AGWF, on the other hand, was that the workman was appointed strictly on a contractual basis in accordance with the applicable service rules. His contractual tenure had expired by efflux of time and there was no "termination" as alleged.

7. The Labour Court, however, rejected the preliminary objections of the AGWF. By its award dated 20.09.2007 in I.D. No. 215/2006/96, the Labour Court held that the Sh. S.O. Rohilla was a "workman," that AGWF was covered under the provisions of the Delhi Shops and Establishments Act and the Industrial Disputes Act, and that the termination of his service was unjustified. While not granting reinstatement, the Labour Court directed the AGWF to pay lump sum compensation of ₹50,000/- to the Workman within three months,

failing which the amount was to carry interest at the rate of 18% per annum.

8. Aggrieved thereof, both the parties have approached this Court by way of these Cross-petitions.

Submission on behalf of the AGWF

9. Learned counsel for the AGWF submits that the AGWF is a *Non-Governmental Regimental Fund* functioning under the adjutant General's Branch, Army Headquarters, and is maintained exclusively for the welfare of serving and retired army personnel, war widows, their dependents, and disabled service members. The Fund, it is urged, is non-public in nature, maintained out of regimental and non-governmental resources, and utilized solely for charitable, social, and philanthropic purposes.

10. The learned counsel submits that the workman voluntarily opted to be governed by the AGWF Terms and Conditions of Service Rules, 1990, vide option letter dated 26.07.1990, which specifically stipulated a contractual period of three years at a time. The said Rules further provided that, unless an employee applied for and was granted an extension, his service would automatically terminate upon completion of the contractual period.

11. In pursuance of the above *Rules*, the workman was confirmed ex post facto for three years w.e.f. 01.07.1990 to 30.06.1993, vide letter dated 10.06.1993. As no extension was granted beyond the said

period, his employment automatically ceased on 30.06.1993. The cessation of service, therefore, was by efflux of time and not by termination. It is argued that such non-renewal of a fixed-term contract does not amount to retrenchment under Section 2(oo)(bb) of the Industrial Disputes Act.

12. It is further submitted that the provisions of Sections 25F and 25N of the ID Act are not attracted, since the workman's employment ended with the expiry of his contractual tenure, and there was no termination by the AGWF.

13. Learned counsel points out that the Labour Court's finding that the option letter dated 26.07.1990 was obtained under coercion or duress is wholly unsupported by any evidence. The workman never raised such objections, and the execution of the said letter was voluntary.

14. It is also urged that the letter of appointment dated 16.01.1989 specifically provided that probation was liable to be extended and that confirmation was subject to suitability. In the absence of any express order of confirmation, there can be no presumption of permanent employment.

15. Learned counsel for the AGWF further submits that the workman never challenged the validity of the "AGWF Terms and Conditions of Service Rules, 1990", which were duly promulgated and brought into effect from 01.07.1990. These Rules were introduced subsequent to the workman's initial appointment dated 16.01.1989,

when no formal service rules were in existence. The cessation of employment being a natural consequence of the expiry of the contractual period, the question of retrenchment or illegal termination does not arise. The learned counsel submits that the Labour Court erred in treating the lawful expiry of a fixed-term contract as a termination attracting Section 25F of the Industrial Disputes Act.

16. It is submitted that even otherwise, the award of ₹50,000/- compensation is wholly unsustainable. The Labour Court itself recognized that the AGWF's activities are welfare-oriented and non-commercial yet proceeded to award compensation without jurisdiction.

17. Learned counsel emphasizes that the workman was fully aware of the nature of the organization and the terms of employment at the time of joining, and cannot now be permitted to claim the protection of industrial laws meant for workmen engaged in commercial undertakings.

18. It is, therefore, contended that the impugned award dated 20.09.2007suffers from gross perversity, non-application of mind, and misappreciation of evidence and the same is legally unsustainable.

19. Learned counsel for AGWF has not raised any other ground of challenge to assail the impugned Award before this Court.

<u>Submission on behalf of the Workman</u>

20. Learned counsel appearing for the workman submits that the

impugned Award dated 20.09.2007, passed by the Learned Labour Court is legal, reasoned, and justified. The findings therein are based on proper appreciation of evidence and law and call for no interference under Article 226 of the Constitution of India, except for the limited challenge as to the quantum of the compensation awarded by the learned labour court.

21. It is submitted that the workman was appointed on 10.01.1989 and continuously worked under AGWF for more than four and a half years with full satisfaction of his superiors. The Labour Court has rightly found that his services were terminated illegally and unjustifiably by the AGWF.

22. It is further submitted that the termination of the workman's services amounted to retrenchment within the meaning of Section 2(oo)of the Act, and the AGWF failed to comply with the mandatory requirements of Section 25-Fof the Industrial Disputes Act, 1947.

23. It is further urged that once the Labour Court concluded that the provisions of Section 25-Fof the ID act were not complied with, the only logical and lawful relief should have been reinstatement with continuity of service and full back wages.

24. Learned counsel submits that the learned Labour Court erred in denying reinstatement despite recording findings in favour of the workman on all material issues. Once it was held that termination was illegal, there was no justification for granting only lump-sum compensation of ₹50,000/-instead of reinstatement.

25. *Per contra*, learned counsel for the AGWF contends that the workman never challenged the validity of the Service Rules, 1990, and in the absence of any such challenge, he cannot now assert that his termination was wrongful. It is submitted that the case at hand is one of cessation of service by efflux of time, as the contractual period stipulated under the said Rules had come to an end. Consequently, there was no obligation upon the AGWF to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947, since the respondent's employment did not amount to retrenchment within the meaning of the Act.

26. Learned counsel for the workman further submits that the workman was terminated from service at the age of 54 years, whereas other employees of the AGWF's Fund have been permitted to continue in employment even up to the age of 65 years. The said action of the AGWF, it is contended, deprived him of nearly eleven years of potential service and corresponding emoluments

27. In rebuttal, it is contended by the learned counsel for the AGWF that the respondent-workman had retired from the Indian Army in the rank of Subedar, and therefore, for the purposes of employment in the AGWF's Fund, he falls within the category of Junior Commissioned Officer (JCO). It is submitted that, in terms of the applicable Service Rules, the tenure of contractual employment for such category of employees is three years from the date of appointment or until attaining the age of 55 years, whichever is earlier. Accordingly, if the impugned award is to be sustained, the compensation awarded ought

to correspond only to the potential remaining period of service and the emoluments payable for that duration, which, in the present case, would be approximately one year, as the respondent's contractual tenure would have naturally come to an end upon his attaining the age of 55 years.

28. The workman contends that the AGWF's plea of efflux of time is misconceived. The so-called "option letter" dated 26.07.1990, relied upon by the AGWF, was executed under compulsion, as no service rules existed at the time of initial appointment. The Workman continued in uninterrupted service even thereafter, and the nature of his employment was permanent and continuous, not contractual. The attempt to retrospectively apply the 1990 Service Rules to his employment is illegal and contrary to principles of natural justice.

29. Learned counsel argues that the AGWF's action amounts to unfair labour practice, as the workman was deprived of his lawful rights under the ID Act and was arbitrarily removed without notice, compensation, or hearing.

30. The workman asserts that the relief of reinstatement is the normal and natural consequence of an illegal termination, and denial of reinstatement in such circumstances defeats the object of the Industrial Disputes Act. The award of ₹50,000/- compensation does not adequately redress the loss of livelihood suffered by the workman.

31. Accordingly, learned counsel for the Workman lastly submits that this Court may be pleased to enhance the compensation

substantially considering that the termination at the age of 54 years was discriminatory and the compensation of ₹50,000/- is wholly disproportionate to the loss sustained.

ANALYSIS & FINDINGS

32. Heard. I have considered the submissions made by the learned counsels for the parties.

33. The main issue that arises for consideration before this Court is whether the Learned Labour Court was justified in holding that the workman was terminated illegally and unjustifiably. A further question that falls for determination is whether the Learned Labour Court was correct in assessing and awarding lump-sum compensation of ₹50,000/-to the workman in lieu of reinstatement, or whether the workman has made out a case warranting enhancement of the said compensation.

W.P.(C) 501/2008

34. As indicated from the record, it is an admitted position that the respondent-workman was appointed *vide* Employment Letter dated 16.01.1989. He was appointed as Accounts Clerk on total emolument @ Rs.1,800/- per month in AG's Welfare Fund at Army HQ, New Delhi, on the terms and conditions applicable to AG's Welfare Fund Employees, 1988, w.e.f.10.01.1989. As per the terms and conditions of his Appointment Letter, he was initially appointed on probation for a period of six months and may be confirmed on expiry of probation

period of six months, if found suitable.

35. His Appointment Letter also provides that it will be obligatory on his part to accept the revised terms and conditions of 1989, as and when promulgated. As is the admitted position, no rules existed in 1989 nor were any such rules placed on record, by any of the sides. Hence, it is clear that hewas appointed on 10.01.1989, at a time when no formal "Terms and Conditions of Service Rules" were in force.

36. As revealed, the respondent, despite working for around three and half years with the AGWF/petitioner, was not issued any confirmation letter which was only issued to him on 10.06.1993 granting him *ex-post facto* confirmation w.e.f. 01.07.1990 for a period of three years. The relevant portion of the said confirmation letter is extracted below:

> "*1. Reference our Appointment letter No. 08603/AG/CW-4(c) dated 16Jan 89 and your option certificate dated 26 Jul 1990.*
>
> *2. Ex post facto confirmation of your appointment as Accounts Clerk in CW-4(c) w.e.f. 01 Jul 1990 as per Terms and Conditions of Services Rules 1990 for a period of 3years is upto 30 Jun 1993 is hereby accorded."*

37. It is not in dispute that it was only in the year1990 that the AGWF promulgated the "Adjutant General's Welfare Fund – Terms and Conditions of Service Rules, 1990."Under these Rules, the period of contractual service under the AGWF was ordinarily three years

from the date of appointment (inclusive of the period of probation) or until the incumbent attained the age of 58 years in the case of Officers and 55 years in the case of Junior Commissioned Officers/Other Ranks (JCOs/ORs), whichever was earlier. The relevant portion is reproduced herein below:

> *"...(c) The period of normal contractual service in AGWF will normally be for three years at a time subject to automatic termination of service on attaining the age of 58 years in case of officers and 55 years in case of JCOs/OR if reached earlier notwithstanding the fact that the contractual period has not expired.*
>
> *(d) An employee, if he so desires, may apply within not less than three months before the cessation of his employment in the AGWF for further employment failing which, the services will be considered as having been terminated on completion of the contractual period. The Appointing Authority may consider the request of such an employee for grant or further employment for a period of three years at a time, subject to automatic termination of service on attaining the age of 58 years for officers and 55 years for JCOs/OR/civilians, if reached earlier notwithstanding the fact that contractual period has not expired."*

38. It is indicated from the record that the respondent/workman accepted the terms and conditions of Service Rules, 1990, which were

effective from 01.07.1990.

39. The said Service Rules further stipulate that all employees shall, in the first instance, be placed on probation for a period of three months, which may be extended up to a maximum of three months at the discretion of the appointing authority.The relevant portion is reproduced herein below-

> *"6 (a) All employees will be initially on probation for three months, which may be extended upto another maximum period of three months at the discretion of the appointing authority.*
>
> *(b) An employee who completes the probationary period successfully will be deemed to have commenced his contract of employment from the initial date of his joining the AGWF.*
>
> *(c) Provided that probationary period may be dispensed with in case of an employee covered by Rules 5(d) with the express written approval of the Appointing Authority."*

40. In the present case, however, the workman was never issued any formal confirmation of appointment upon completion of the maximum period of probation, it was only on10.06.1993 that the AGWF granted an *ex-post facto* confirmation of his appointment, w.e.f. 01.07.1990 up till 30.06.1993 and thereafter his services were brought to an end in the same month, on the ground of expiry of the contractual period, without any extension being granted.

41. Such an action on the part of the AGWF was rightly held by the Learned Labour Court to be arbitrary and unjustified. The AGWF, on the one hand, seeks to rely upon the Service Rules, 1990, contending that since the workman had opted to be governed by those Rules, his services automatically came to an end upon efflux of time, and that the case does not amount to termination or retrenchment, whereas on the other hand, the AGWF has remained conspicuously silent as to why the appointment of the workman was never confirmed upon completion of the maximum period of probation; something that the same Rules required the AGWF to do. The conduct of the AGWF, therefore, amounts to blowing hot and cold at the same time, which cannot be permitted in law.

42. Another irregularity in the approach of the AGWF is that, although the workman was appointed on 10.01.1989, his services were terminated with effect from 30.06.1993, i.e., after having worked for more than four years. Such continuation of service, beyond the prescribed contractual term, was impermissible under Rule 5(c) of the aforesaid Service Rules, 1990 which prescribe that the normal contractual period of service under the AGWF will be three years. The action of the AGWF in this regard has also been rightly held to be arbitrary and unjustified.

43. The explanation offered by the AGWF that after the workman opted to be governed by the Service Rules, 1990, he was to be deemed as re-appointed with effect from 01.07.1990 is equally untenable. Such an interpretation cannot come to the aid of the AGWF,

particularly when the workman had already been in continuous service since 1989.

44. Furthermore, the act of the AGWF in issuing *ex-post facto* confirmation of appointment on 10.06.1993, while simultaneously informing the workman that his employment would cease on 30.06.1993, effectively denied him the opportunity to exercise his right to apply for an extension of service. Under Rule 5(d) of the Service Rules, 1990, every contractual employee was entitled to apply for such extension not less than three months prior to the expiry of the contractual term. The AGWF's conduct, therefore, deprived the workman of a statutory opportunity available to him under the said Rules.

45. In view of the foregoing discussion, this Court finds no reason to interfere with the findings and conclusions recorded by the Learned Labour Court in the impugned award. The reasoning adopted by the Labour Court is sound and based on a correct appreciation of both facts and law.

W.P.(C) 1616/2008

46. Turning now to the plea of the workman seeking enhancement of the lump-sum compensation awarded by the Learned Labour Court, it is evident from the discussion above that the Labour Court rightly held that the AGWF acted arbitrarily and that the workman's services were terminated illegally, in violation of the statutory mandate contained in Section 25F of the Industrial Disputes Act, 1947. The

Labour Court, however, taking note of the fact that, at the time of pronouncement of the award in the year 2007, the workman had already attained the age of 68 years, rightly concluded that reinstatement could not be granted and, accordingly, awarded lump-sum compensation of ₹50,000/-in lieu thereof.

47. The Hon'ble Supreme Court in ***State of Uttarakhand v. Raj Kumar,***(2019) 14 SCC 353, had observed as to how and when must the Labour Court/Tribunal grant the relief of compensation in lieu of reinstatement along with back wages. The relevant paragraphs are reproduced herein below-

> *"9.In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSN v.Bhurumal [BSNLv.Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] andDistt. Development Officerv.Satish KantilalAmrelia[Distt. Development Officerv.Satish KantilalAmrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276]*
> .
>
> *10.It is apposite to reproduce what this Court has held iBSNL[BSNLv.Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)*
>
> *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied*

mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [seeState of Karnatakav.Umadevi (3)[State of Karnatakav.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he

> *has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*
>
> *35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."*

48. Upon perusal of the aforementioned case law, it is inferred that

normally when the termination is found to be illegal, the principle of grant of reinstatement with full back wages has to be applied as per the facts and circumstances of each case and shall not be awarded mechanically, rather, in the interest of justice, the workman shall be granted a relief in the form of a lump sum monetary compensation as it is more appropriate.

49. Further, It is an admitted position that the last drawn wages of the workman were Rs. 3,202/- per month, and that his services were terminated when he was 54 years of age. The workman was appointed in the category of Junior Commissioned Officers/Other Ranks (JCOs/ORs), for which the prescribed age of superannuation under the Service Rules, 1990 is 55 years. The workman, having voluntarily opted to be governed by the said Rules through his option letter dated 26.07.1990, which duly bears the workman's signature, as exhibited before the Learned Labour Court, cannot now claim a higher age of superannuation of 60 or 65 years. Consequently, at the time of cessation of his employment, the workman would, at best, have had one additional year of service remaining before attaining the age of superannuation. Ends of justice would have been adequately met if the workman was awarded lump sum compensation equivalent to the sum of one-year wages, as last drawn by the workman, although, the learned labour court has awarded lump sum compensation more than that.

50. Even if for the sake of arguments, it is accepted that the Service Rules of 1990 were thrust upon the workman, even in that case, he

would still be governed by the contract of employment, which also does not prescribe for automatic confirmation of employment, upon completion of probation and if that is so, he cannot be deemed to be confirmed, so the workman was not entitled to be reinstated back in service. That will be another thing to say that since AGWF failed to grant confirmation to him and has granted confirmation *ex-post facto* from 01.07.1990 without taking into consideration his earlier employment period, the termination was held without notice, in violation of service Rules, 1990 and that is why the act of AGWF was amounting to illegal termination, and findings of the learned labour court in this regard are absolutely correct. Furthermore, in considering the interests of both parties and the overall circumstances of the case, it is relevant to note that the petitioner-AGWF is an organization maintained exclusively for the welfare of serving and retired Army personnel, war widows, their dependents, and disabled soldiers. The respondent-workman himself is a retired Army officer, who must already be in receipt of a service pension. In this backdrop, the lump-sum compensation of Rs. 50,000/- as awarded by the Learned Labour Court appears to be reasonable, just, and equitable, balancing the interests of both sides.

51. Upon a careful perusal of the findings recorded in the impugned award, this Court is of the considered opinion that the Learned Labour Court rightly concluded that reinstatement of the workman would not be justified in the facts and circumstances of the case. Accordingly, this Court finds it appropriate and in the interest of justice to affirm

the award of lump-sum compensation of ₹50,000/-granted in lieu of reinstatement to the respondent-workman.

52. In view of the foregoing discussion, this Court finds no infirmity in the impugned Award dated 20th September, 2007, passed by the learned Presiding Office, Labour Court, Karkardooma Courts, Shahdara, New Delhi in ID No. 215/06/96.

53. Both the writ petitions, being W.P.(C) 501/2008 & W.P.(C) 1616/2008, are accordingly dismissed along with pending applications, if any.

54. There shall be no order as to costs.

RENU BHATNAGAR, J

NOVEMBER 17, 2025

Bs/Kz