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

Reserved on: 02.02.2026
Date of decision: 06.04.2026
Uploaded on: 06.04.2026

\+ W.P.(C) 3131/2013
HARISH CHANDER .....Petitioner
Through: Mr. D.B. Yadav and Mr. Sauraj Yadav, Advs.

versus

M/S JAI DURGA INDUSTRIES & ANR .....Respondents

Through: Mr. Krishna Dev Pandey, Adv.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J

1. The instant Writ Petition has been filed under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking quashing of the Award dated 17.02.2011 passed by the learned Labour Court No. IX, Karkardooma Courts, Delhi in Industrial Dispute bearing No. 169/08 (hereinafter ***'Impugned award')*** wherein the Labour Court held that the Petitioner/workman was not entitled to any relief against the management.

BRIEF FACTS:

2. The Petitioner was employed as a *Rula Mistry (LackerMistri)* under the management of Respondent No. 1 since February 1998 and was drawing last wages of around Rs. 3,500/- per month.

3. During his service, the Petitioner suffered an accident allegedly in the

year 2002, wherein a steel blade penetrated his right hand and spine. Instead of ensuring proper treatment at an Employee State Insurance Corporation (hereinafter, '*ESIC*') hospital, the Respondent/ Management got him treated at a private hospital. The Petitioner was never operated on nor was the blade removed from his body.

4. The blade being in the Petitioner's body, caused recurring and severe pain. Subsequently, upon approaching the ESIC dispensary, the Petitioner was referred to an ESI hospital, where he remained admitted from 06.03.2007 to 08.03.2007. As per the Petitioner, upon recovery, when he reported for duty on 09.03.2007, Respondent No. 1 refused to reinstate him and terminated his services without assigning any reason.

5. Aggrieved by the termination, the Petitioner issued a legal demand notice and initiated conciliation proceedings; however, the Respondent/management neither responded nor allowed the Petitioner to resume duties. Owing to the non-cooperative stance of the Respondent, the dispute was referred for adjudication.

6. The Petitioner thereafter filed a Statement of Claim, to which the Respondent filed a Written Statement, followed by a Rejoinder by the Petitioner. Both parties led evidence before the Labour Court. Upon conclusion of proceedings, the Learned Presiding Officer, passed the ***Impugned Award*** against the Petitioner. The said award reads as under:

> *"18. In view of the above mentioned discussion coupled with own admissions of the workman in his cross examination to the above effect and further coupled with entire material on record, I am of the considered opinion that the workman herein himself abandoned his job w.e.f. 29.01.2007 at his own will and accord. Hence, the question does not arise about the termination of his services illegally*

> *and/or unjustifiably by the management, as alleged in the statement of claim of the workman. In other words, the workman has miserably failed to prove issue no. 1 in his favor by way of any cogent evidence, either oral or documentary.*
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> *…….*
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> *20. In view of the findings of this court on issue nos. 1& 2 to the above effect, I am of the considered opinion that the workman is not entitled to any relief in this matter against the management. The award is passed to the above effect against the workman and in favour of the management."*

7. Thereafter, in the year 2009, the workman instituted a petition under Section 75 of the ESI Act before the Court of the learned Senior Civil Judge, Tis Hazari Courts, seeking compensation on account of the employment-related accident along with other statutory benefits.

8. During the pendency of proceedings at the stage of petitioner's evidence, the matter was amicably settled, wherein ESIC undertook to provide the petitioner, Harish Chand, with complete medical treatment, including examination by a Medical Board to assess his injuries and disability, in terms of the ESI Act, 1948.

9. Additionally, the management paid a sum of ₹15,000/- as compensation to the petitioner, which was duly received. The petition was accordingly disposed of with directions to ESIC to ensure continued medical care, without prejudice to other monetary claims of the petitioner.

10. During the pendency of the proceedings, the workman expired in the year 2022. Consequently, his legal representatives, namely his wife and daughter, were duly brought on record and substituted in his place in accordance with law in the year 2022.

11. The present Writ Petition has been filed by the Petitioner assailing the aforesaid impugned Award, inter alia, seeking its setting aside and further praying for issuance of appropriate directions to Respondent No. 1 to reinstate the Petitioner in service with full back wages, increments, and continuity of service.

ISSUES INVOLVED:

12. The sole question before this Court at present is:

Whether the Learned Labour Court was justified in denying any relief to the Petitioner/Workman against the management?

SUBMISSIONS OF PARTIES:

13. The foremost submission on behalf of the Petitioner on merits is that while in continuous service, the Petitioner met with an accident during the course of employment and due to said injury, he was hospitalized from 06.03.2007 to 08.03.2007. Upon reporting for duty on 09.03.2007, he was illegally refused employment, amounting to termination without any notice, charge-sheet, or inquiry. He goes on to contend that such termination is in clear violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "***the Act***"), as no notice or notice pay was given, no retrenchment compensation was paid and neither any reasons were assigned whatsoever.

14. It is further submitted by the Petitioner that he approached the Labour Authorities, and the Labour Inspector's Report clearly records that the Management admitted the Petitioner to be its employee. Furthermore,

despite intervention, the Management refused reinstatement and payment of dues, though the management admitted it was ready to take the workman back on duty. This admission acknowledges the existence of employer-employee relationship and contradicts the plea of abandonment. Additionally, he submits that such conduct of the Management establishes that the termination was not due to any misconduct or abandonment. If the workman had truly abandoned service, there would be no occasion for such an offer**.** Therefore, as per the Petitioner the plea of abandonment is wholly misconceived and unsupported by law as it is settled that abandonment must be intentional and proved by cogent evidence and mere absence does not amount to abandonment.

15. Counsel for the Petitioner further submits that it is an admitted position that the Management did not issue any charge-sheet nor conducted any domestic inquiry. It is further contended that the Learned Labour Court erred in deciding issues not raised by the parties, particularly regarding abandonment. The Labour Court failed to consider this crucial piece of evidence**,** thereby vitiating the Award as the Management never proved abandonment through legally admissible evidence, therefore, the finding of abandonment is beyond pleadings and perverse**.** He additionally submits that the Labour Court failed to consider admission of accident by the Management in cross-examination coupled with the admission at ESI Hospital for treatment and the explicit admission regarding willingness to take back the workman and such non-consideration of material admissions vitiates the Award.

16. He further submits that he was incapacitated due to an employment-related injury, which is also substantiated by admission in ESI hospital and

subsequent settlement before the ESIC Court dated 22.07.2015 wherein the Management paid compensation of Rs. 15,000/- for the accident suffered by the Petitioner. This clearly establishes that the accident occurred during employment and Management's liability was acknowledged.

17. Lastly, he submits that the Petitioner has remained unemployed since the date of illegal termination and has suffered grave financial hardship. Despite best efforts, he has been unable to secure alternative employment and is willing to resume duties with the Management.

18. In contradistinction, ld. Counsel appearing on behalf of the Respondents made an attempt to sustain the finding(s) which have been arrived at by the learned Labour Court by urging that the present petition is not maintainable as no industrial dispute ever existed between the parties. The essential condition for invoking the provisions of the Industrial Disputes Act, 1947 is the existence of a dispute including arising out of termination by the employer.

19. At the outset, it was contended by learned counsel for the Respondent/Management that the present Writ petition is liable to be dismissed on the ground of gross delay and laches. It was submitted that the impugned Award dated 17.02.2011 was passed in the presence of the Petitioner, who had full knowledge thereof; however, the petition has been filed after an unexplained delay of more than two years. It was submitted that such inordinate delay disentitles the Petitioner from seeking discretionary relief under Article 226 of the Constitution, and on this ground alone, the petition deserves dismissal.

20. It was next contended by learned counsel for the Respondent/Management that the Petitioner had voluntarily abandoned his

employment with effect from 29.01.2007, without any notice, intimation, or sanctioned leave. It was submitted that the record clearly evidences continuous unauthorized absence from the said date. It was further submitted that the Management made repeated bona fide efforts to secure his return to duty by issuing letters dated 27.02.2007, 15.03.2007, 30.03.2007 and 09.04.2007, yet the Petitioner failed to respond or resume duties and such conduct clearly amounts to voluntary abandonment of service and cannot be construed as termination or retrenchment.

21. It was also contended by learned counsel for the Respondent/Management that the burden to prove illegal termination squarely lies upon the workman, which has not been discharged in the present case. It was submitted that no cogent evidence has been placed on record by the Petitioner to establish termination by the Management. On the contrary, it was contended that the material on record substantiates the Management's case of prolonged unauthorized absence coupled with repeated communications calling upon the Petitioner to rejoin duties.

22. It was further contended that even before the Learned Labour Court, the Management had, in its Written Statement dated 23.02.2008, expressly conveyed its willingness to take the Petitioner back in service**.** It was submitted that despite such an offer, the Petitioner chose not to resume duties and continued with the litigation, thereby demonstrating lack of intention to continue in employment.

23. It was also submitted that the Petitioner's plea of having approached the Conciliation Officer was neither substantiated before the Labour Court nor supported by any material on record. It was contended that such a plea, raised for the first time at this stage, is impermissible. It was further

contended by learned counsel for the Respondent/Management that no demand notice was ever served upon the Management.

24. Lastly, it was contended by learned counsel for the Respondent/Management that the conduct of the Petitioner, including his failure to resume duties despite repeated opportunities, reasonably indicates that he was gainfully employed elsewhere, and had no intention to continue with the Management.

25. Lastly he concludes his arguments by submitting that it is a settled proposition of law that where a workman remains absent without authorization; and fails to report for duty despite repeated opportunities; such conduct amounts to abandonment of service, disentitling him from any relief. In support of this proposition, he places reliance on the following judgments ***Sukhdev Singh v. Delhi Development Authority,*** 2011 Online Del 4680, ***Competition Printing Press v. Jaiprakash Singh,*** 2001 LLR 768, ***Laxmi Kant v. Presiding Officer, Industrial Tribunal-cum-Labour Court,*** P&H High Court (CWP No. 2895/1998), ***P. Krishnan v. Management, Jonas Woodhead & Sons (India) Ltd.***, 2003 LLR 852 contending that these judgments consistently hold that failure to resume duty despite opportunities disentitles the workman from claiming relief for alleged termination**.**

DISCUSSION:

26. In light of the rival submissions, the issue that arises for consideration before this Court is whether the Labour Court erred in holding that the Petitioner was not entitled to any relief whatsoever, despite the plea of illegal termination/ retrenchment on behalf of the workman.

27. It is well settled that while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, this Court does not act as a Court of appeal over the findings recorded by the Labour Court. The scope of judicial review is limited and interference is warranted only where the ***Impugned award*** suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored or irrelevant considerations have been taken into account.

28. At the same time, it is equally settled that the power of judicial review is intended to ensure that grave injustice is not perpetuated and that findings which are unsupported by evidence or based on erroneous application of law do not sustain. Where the conclusions drawn by the Labour Court are not borne out from the material on record or are contrary to settled legal principles, this Court would be justified in exercising its supervisory jurisdiction to interfere with the Award.

29. The principal grievance of the Petitioner is that he never abandoned his duties on his own accord and it was the Management who didn't allow him to join his duties after he was discharged from the hospital. On the other hand, the Management has, since the inception of the dispute, consistently maintained that it was rather the Petitioner who stopped appearing for work and the management was always ready to keep the Petitioner on work.

30. The Labour Court, after due consideration of the pleadings and the documents placed on record, decided the dispute against the workman holding that the workman had himself abandoned the job at his own will and accord and is not entitled for any relief.

31. The preliminary objection raised by the Management is that the

present petition is not maintainable as no industrial dispute ever existed between the parties and even if it existed, the same is liable to be dismissed on account of gross and unexplained delay, in as much as the alleged termination took place in 2007, the dispute came to be adjudicated in the year 2011, and the workman approached this Court after a lapse of approximately two years.

32. In order to deal with such a contention of the management it would be appropriate to refer to definition clause of the Act which defines what constitutes an industrial dispute. Section 2(k) defines industrial dispute as:

> *"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"*

33. On a bare reading of the Act, an '*industrial dispute*' can be understood as a disagreement or conflict between employers and workmen (or among themselves) relating to employment matters such as hiring, termination, wages, or working conditions. In simple terms, it refers to any workplace-related conflict affecting jobs or service conditions.

34. It would also be pertinent to refer to Section 2A of the Act, which clarifies the circumstances under which an individual dispute may be treated as an industrial dispute. The relevant provision is extracted as under:

> ***"[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—***
> *[(1)] Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that*

workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an
industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]
[(2) Notwithstanding anything contained in section l0, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]"

35. The preliminary objection of the Management that no industrial dispute exists is untenable in view of the scheme of the Industrial Disputes Act, 1947. Section 2(k) gives a broad meaning to an industrial dispute, covering any conflict between employer and workman relating to employment, termination, or service conditions. Thus, a dispute arising out of termination or conditions of service clearly falls within its ambit. Further, Section 2A removes any doubt by expressly treating disputes relating to discharge, dismissal, or termination of an individual workman as

an industrial dispute, even in the absence of collective espousal. The provision creates a legal fiction to ensure that individual grievances are not defeated on technical grounds.

36. Accordingly, the present dispute, being directly connected with the petitioner's employment/termination, squarely qualifies as an industrial dispute. The Management's objection is therefore liable to be rejected.

37. As regards the second contention of Management, regarding limitation and delay in filing present writ, it is well settled that the Act, does not prescribe any period of limitation for raising an industrial dispute before any forum including High Court. While delay and laches may, in appropriate cases, be a relevant consideration for moulding the relief, mere delay, by itself, does not render the reference or the petition incompetent particularly where the existence of employer–employee relationship and the legality of termination are in issue.

38. In view of the above, this Court is of the considered opinion that the objection on the ground of delay is not sufficient to non-suit the petitioner, and it would not be appropriate to decline to entertain the present writ petition on this ground alone.

39. Now, adverting to the rival submissions urged on behalf of the parties. The principal contention of the Petitioner is that he met with an accident during the course of employment. Further, due to non-availability of proper treatment and in consequence of his injuries, he was hospitalized from 06.03.2007 to 08.03.2007. Upon reporting for duty on 09.03.2007, he was illegally refused employment, amounting to termination without any notice, charge-sheet, or inquiry. Whereas, the Respondent denied the same contending that the Writ is not maintainable in the absence of a written

order of termination.

40. At this stage, it is apposite to note that termination of service, in the context of industrial jurisprudence, is not confined to a formal or written order but encompasses any act of the employer which has the effect of severing the employer–employee relationship. Termination may be express or implied, and even a refusal to allow a workman to resume duties or denial of employment can, in given circumstances, constitute termination in the eyes of law. The substance of the action, and not merely its form, is determinative of whether a termination has in fact occurred.

41. To appreciate the essential ingredients of retrenchment, reference may be made to Section 2(oo) of the Industrial Disputes Act, 1947, which defines "retrenchment" as follows:

> *"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*
> *(a) voluntary retirement of the workman; or*
> *(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
> *[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]*
> *(c) termination of the service of a workman on the ground of continued ill-health;]"*

42. The term 'retrenchment' has been defined as the termination by the employer of the service of a workman for any reason whatsoever, except

those specifically excluded, namely voluntary retirement, superannuation, or termination on account of the non-renewal of a contract of employment. The statute does not provide that, for an act of termination to constitute retrenchment, a written order or formal communication is mandatory; such termination may also be oral or may be inferred from the conduct of the employer.

43. As also is well settled by judicial precedents that termination of service need not necessarily be evidenced by a formal written order. An oral refusal of employment or denial of duty, if established on evidence, would equally constitute termination within the meaning of the Act. In view of the matter, the contention of the management that the workman had voluntarily abstained from duties, and that there is no written order of termination or retrenchment, is untenable in law and devoid of statutory support.

44. Coming to the primary contention of the workman that he did not abandon his duties but was, in fact, prevented by the management from resuming work, the same stands corroborated by the letter dated 10.03.2007 sent by him through registered post to the management, wherein he specifically protested against his illegal termination and called upon the management to permit him to rejoin duties.

45. The plea of the management that no such letter was received is liable to be rejected, in as much as the said communication was dispatched through registered post A.D., and the acknowledgment of its delivery stands duly exhibited on record.

46. Conversely, the assertion of the Management that it had issued letters calling upon the workman to resume duties cannot be accorded any

evidentiary value, in as much as the alleged communications have neither been proved to have been duly served upon the workman nor shown to have been dispatched through any reliable mode, such as registered post. Management has contended that letters dated 27.02.2007, 15.03.2007, 30.03.2007 and 09.04.2007 were sent to workman. When workman had tried to join duty on 09.03.2007 what was the occasion of sending letters dated 15.03.2007, 30.03.2007 and 09.04.2007. It obviously was an attempt on the part of Management to create false ground against the workman. Despite assertions, no such letters have been proved on record by the Management. In the absence of such proof, this Court is unable to accept the contention of the Management that notices were in fact issued directing the workman to rejoin duties, and the said plea is accordingly rejected.

47. Even assuming, for the sake of argument, that the workman was not reporting for duty regularly, an argument not even raised by the Management, the same stood sufficiently explained by the injuries suffered by him during the course of employment.

48. Furthermore, even if it is presumed that the case is one of abandonment and not retrenchment, the Management was duty-bound to conduct a proper domestic inquiry before treating the services of the workman as terminated. Admittedly, no such inquiry was ever initiated or conducted. In the absence of any inquiry, the alleged termination is rendered illegal and unsustainable in law.

49. It is further pertinent to note that the management has contended in its written statement before the Labour Court that it had offered the workman an opportunity to rejoin duties, which the workman allegedly declined. This assertion is factually incorrect and misleading. The workman

was, at all material times, willing to resume duties, albeit with the statutory benefits to which he is legally entitled.

50. The conduct of the management in extending such an offer, even if assumed to be true, itself militates against its plea of abandonment or misconduct. Had the workman genuinely abandoned service, there would have been no occasion for the management to call upon him to rejoin duties. This contradiction clearly undermines the stand of the management and reinforces the workman's case that the termination was neither voluntary nor on account of any misconduct, but was, in fact, illegal and unjustified.

51. Now, coming to secondary contention of the management that the burden to prove illegal termination rested entirely upon the workman and that he failed to produce documentary evidence to support/prove his case of retrenchment or even termination before the Ld. Labour court. Such a contention in understanding of this court is misconceived and untenable as the workman, being illiterate, cannot be expected to be conversant with procedural formalities such as maintenance or keeping muster rolls or attendance records, which are, in any event, in the exclusive custody and control of the management. In such circumstances, an adverse inference is liable to be drawn against the management, particularly when there exists a reasonable likelihood of such records being withheld, fabricated or otherwise manipulated.

52. It is pertinent to note that the workman duly produced on record the letter addressed to the management protesting against his illegal termination and, thereafter, promptly approached the Labour Inspector to ventilate his grievance. These contemporaneous acts clearly negate any intention on his

part to abandon service and render the plea of abandonment raised by the management a mere afterthought.

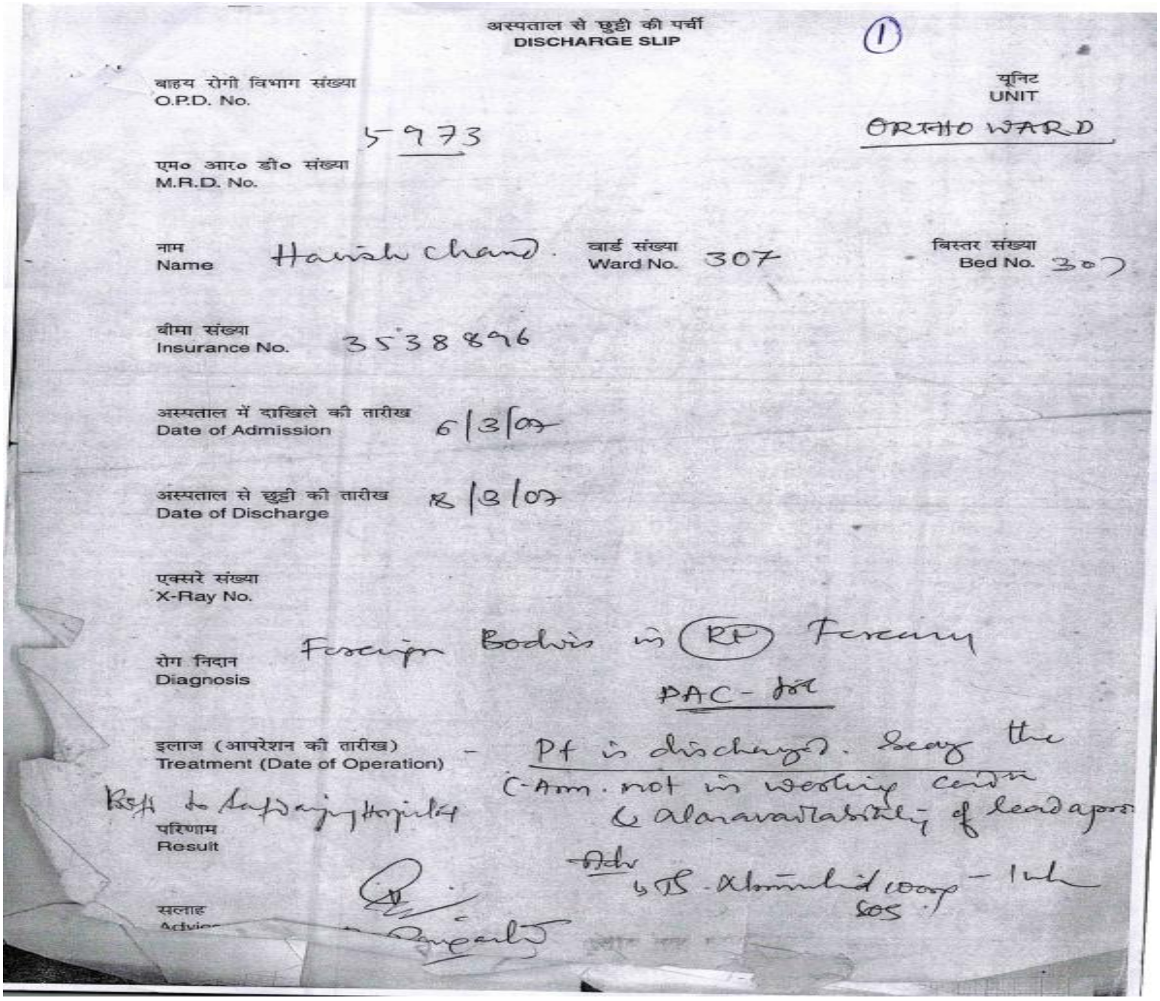
53. Further, the Labour Inspector's report dated 21.05.2007 unequivocally records that the management admitted the employment of the workman, Harish Chander, yet unjustifiably refused reinstatement with legal back wages. The management also failed to produce any employment records despite repeated notices, thereby indicating a deliberate withholding of material evidence. The report further notes that the management was liable to face proceedings under the Minimum Wages Act, 1948 for such non-compliance. The said report, therefore, lends substantial corroboration to the workman's case of illegal termination and fortifies his claim for reinstatement with back wages.

54. The Management has further contended that the workman was gainfully employed elsewhere and, therefore, had abandoned his employment. It was asserted that despite an offer to rejoin duties made by the Management, the workman failed to report back for work, thereby demonstrating his unwillingness to resume service. In this regard it can be noted that the absence of the workman from duties was not on account of any gainful employment elsewhere, but was solely attributable to the severe pain and physical incapacity caused by an employment-related injury, wherein a foreign object remained embedded in his body following the accident.

55. In such circumstances, it would be wholly unreasonable to presume that the workman was engaged in alternative employment. A person suffering from serious physical impairment, particularly involving loss of functional use of his hands, cannot be expected to undertake any form of

gainful work. The very nature of his condition renders such an assertion inherently improbable. Rather than indicating abandonment, the continued absence stands sufficiently explained by medical incapacity, thereby negating the plea of the Management.

56. The medical records placed on record unequivocally establish that the workman's arm was rendered non-functional, and the discharge reports clearly record the presence of the foreign object. The said report is extracted as under:


अस्पताल से छुट्टी की पर्ची
DISCHARGE SLIP

(1)

बाह्य रोगी विभाग संख्या
O.P.D. No. 5973

यूनिट
UNIT ORTHO WARD

एम० आर० डी० संख्या
M.R.D. No.

नाम
Name Harish Chand.

वार्ड संख्या
Ward No. 307

बिस्तर संख्या
Bed No. 307

बीमा संख्या
Insurance No. 3538896

अस्पताल में दाखिले की तारीख
Date of Admission 6/3/07

अस्पताल से छुट्टी की तारीख
Date of Discharge 8/3/07

एक्सरे संख्या
X-Ray No.

रोग निदान
Diagnosis Foreign Bodies in (Rt) Forearm

इलाज (आपरेशन की तारीख)
Treatment (Date of Operation)

परिणाम
Result

सलाह
Advice

57. In such circumstances, a strong and reasonable inference arises that

upon becoming aware of the workman's medical condition and the necessity of surgical treatment, the management chose to terminate his services in order to evade its legal obligations, including liability for proper medical treatment and consequences arising from an accident that occurred during the course of employment.

58. This position is further fortified by the fact that the workman was admitted to the ESI Hospital and that a settlement dated 22.07.2015 was arrived at before the ESIC Court, wherein the management paid a sum of ₹15,000/- as compensation for the said accident. The payment of compensation constitutes a clear acknowledgment by the management that the injury was sustained during the course of employment and that it bore responsibility in that regard.

59. These facts conclusively establish that the workman was a bona fide employee who suffered an employment-related injury, resulting in temporary incapacitation, and was thereafter wrongfully and illegally denied employment by the management.

60. It shall also be apposite to mention the order passed under Section 75 of ESIC Act by the Sr. Civil Judge, Tis Hazari Court which records that the Petitioner suffered grave injuries to his neck, backbone, and hand on account of medical negligence. It is further noted that the petitioner continues to suffer from the said injuries and, despite being an employee, has not been provided with any medical treatment or facilities as were assured to him. The relevant part of the judgment is extracted here under-

> *"This is a petition filed u/s 75 of ESIC Act filed by petitioner Harish Chand in respect of accident suffered by him while being in employment of M/s Jai Durga Industries owned by respondent no.1 and 2 and while being the insured*

employee under the ESIC. It is stated that during the accident, steel blade pierced in the neck, hand and in backbone of the petitioner and due to medical negligent those steel blade could not be removed Iron the body of the Petitioner and those are lying in the neck, backbone and hand of the petitioner and because of such injuries petitioner is still suffering and he has never been provided any treatment / medical facility despite being ensured employee. Whilestating various other facts, petitioner has also sought directions for ESIC for medical treatment and other benefit from employment/ ESIC."

61. The aforesaid facts, in particular the medical report evidencing the workman's inability to perform his duties and the letter addressed by the workman seeking reinstatement along with disbursement of arrears for the period during which he was not permitted to work, unequivocally demonstrate that the award passed by the Learned Labour Court suffers from inherent defects. These include non-application of the correct provisions of law and improper appreciation of the evidence adduced by the parties.

62. Accordingly, the impugned award is liable to be set aside, as the finding that the Management had illegally terminated the services of the workman in violation of Section 25F of the Act is unsustainable in law.

63. Now, coming to the point of relief which workman is entitled to. In light of the aforesaid discussion, the determination of appropriate relief assumes significance, particularly on the question whether the workman is entitled to any relief in the facts and circumstances of the present case. Although the workman had, at the outset, sought reinstatement, such relief does not follow as a matter of course and must be considered in the totality of circumstances. In industrial adjudication, relief is to be moulded having

regard to factors such as the length of service, nature of employment, manner of termination, passage of time, supervening developments, and the practical feasibility of restoring the employer–employee relationship.

64. In the present case, it is evident that the termination was effected in violation of Section 25F of the Act, and that the engagement was not for a short or fixed-term project but continued over a substantial period from 1996 to 2007, which are relevant considerations while adjudicating the nature and extent of relief to be granted.

65. At this stage this court find it apposite to refer to the judgment of Hon'ble the Supreme Court In ***B.S.N.L. v. Bhurumal,*** (2014) 7 SCC 177, Hon'ble the Supreme Court held that even where termination is found to be in violation of Section 25-F of the Industrial Disputes Act, 1947, reinstatement with back wages is not automatic; compensation in lieu of reinstatement may be appropriate, particularly in cases of short-term or daily-wage employment which reads as under:—

> *"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 malafide and/or by way of victimization, 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 procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view 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."*

66. Support can also be taken from the judgment of ***Jagbir Singh vs. Haryana State Agriculture Marketing*** (2009) 15 SCC 327, in which the Hon'ble Apex Court dealt with similar issues and held that:

> *"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of all employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*
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> *xxx*
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> *14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment if passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.*
>
> *xxx*
>
> *17. While awarding compensation, the host of factors, interalia, matter and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances."*

67. As is evident in the present case, the termination in the present case dates back to the year 2007 and, as on date, nearly 19 years have elapsed.

The workman was admittedly engaged as a *Rula Mistry (LackerMistri)* and, as per Management's counter affidavit, the workman was earning approximately Rs. 3740/- per month at the relevant time. In view of the considerable lapse of time and the fact that the Workman has already demised in 2022, the grant of reinstatement would neither be practical nor equitable.

68. The ancillary issue that arises for consideration is the quantum of lump-sum compensation which is required to be paid to the Workman. If the Management were to follow provisions of Section 25F of the ID Act, the workman would have received retrenchment compensation and one month's notice or pay in lieu thereof.

69. At this stage, it is apposite to refer to the decision of the Supreme Court in ***Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd. & Anr.*** (Civil Appeal arising out of SLP (C) No. 20902/2024 and connected matters, decided on 29 January 2025), which lays down clear guidelines for determination of the quantum of compensation in cases where reinstatement is substituted with monetary relief. Herein, the Apex Court has categorically held that compensation cannot be nominal, uniform, or arbitrary, and must bear a direct nexus with the length of service rendered by the workman. It was emphasised that a blanket award of compensation, without regard to the duration of employment, would violate the principle of proportionality. The relevant part of the judgment is extracted here under-

> *"9. Therefore, in the facts and circumstances of the matters, we deem it fit to enhance the compensation granted to the appellants by the High Court. We hold that the appellants would be entitled to enhanced compensation at the rate of*

Rs. 1.5 lakhs per year for the period they have worked and in case, they have worked for a part of the year, then the amount of compensation is to be calculated at the same rate to be applied on a pro-rata basis.[...]"

70. In light of the above principles, as enunciated by the Supreme Court in ***Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd. & Anr. (supra),*** this Court deems it fit and appropriate that the compensation in the present case be awarded in accordance with the aforesaid parameters, having due regard to the duration of service of approximately 09 years rendered by the Respondents and the attendant facts and circumstances.

71. Accordingly, the following directions are passed:

i. The ***Impugned Award*** is hereby quashed. As regards the relief, the workman shall be entitled to a consolidated sum of compensation in lieu of reinstatement;

ii. The Respondent/Management shall pay to the Petitioner/LR(s) of Petitioner a consolidated compensation of Rs. 20,00,000/- (Rupees Twenty Lakhs only) within a period of six months from the date of this Order. In the event of default, the said amount shall carry interest at the rate of 9% per annum from the date of default until the date of actual payment to the Petitioner/Workman.

72. In the aforesaid terms, the Writ Petition along with pending application(s), if any, stand disposed of. No order as to cost(s).

SHAIL JAIN
JUDGE

APRIL 06, 2026/HP