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

Reserved on: 10.03.2026
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\+ W.P.(C) 1771/2013
M/S SANJAY GARMENTS .....Petitioner

Through: Mr. Paritosh Bhudhiraja, Ms. Larika Khandelwal, Mr. Rishi Raj Dewshwal,Advs.

versus

RAKESH KUMAR .....Respondent
Through: Mr. Krishna Dev Pandey, Adv.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. The present Writ Petition has been instituted by the petitioner/Management, M/s Sanjay Garments, under Articles 226 and 227 of the Constitution of India assailing the Award dated 03.07.2010 passed by the learned Presiding Officer, Labour Court–XI, Delhi.

BRIEF FACTS

2. The brief factual matrix, as borne out from the record, is that the petitioner, M/s Sanjay Garments, is a proprietary concern of which Shri Sanjay Kumar ,is the sole proprietor . The establishment is situated at 2/25, Moti Nagar, New Delhi – 110015 and is engaged in garment stitching work, engaging four to five persons at a time.

3. The respondent/workman, Shri Rakesh Kumar, was engaged in stitching work at the said establishment. According to the

respondent/workman, he had been working as a tailor with the Management for over twelve years, initially with M/s Dayal Sons Selection and thereafter with M/s Sanjay Garments, both stated to be functioning from the same premises at 2/25, Moti Nagar, New Delhi, and was drawing last wages of Rs. 2,000/- per month. The respondent/workman claimed that he was working as a permanent employee under the supervision and control of the Management at the establishment premises.

4. The case of the petitioner/Management was materially different. According to the petitioner/Management, the respondent/workman had been engaged on a piece-rate basis for stitching work from July 1998 till 04.08.1999 and was earning Rs. 2,600/- per month. The petitioner/Management denied the existence of any concern in the name of M/s Dayal Sons Selection and contended that the respondent/workman had voluntarily left the work on 04.08.1999 after securing better employment elsewhere and accepted Rs. 2,000/- towards full and final settlement of dues. Reliance in this regard was placed upon Ex. MW1/1, Ex. MW1/2 and Ex. MW1/3.

5. The respondent/workman alleged that his services had been terminated illegally and unjustifiably on 04.08.1999 without notice, chargesheet, domestic enquiry or payment of earned wages for July 1999. On 05.08.1999, a complaint was lodged on behalf of the respondent/workman through the All India Engineering & General Mazdoor Union before the Assistant Labour Commissioner, Karampura, New Delhi, alleging illegal termination on 04.08.1999, non-payment of wages for the month of July 1999, and seeking reinstatement in service. Conciliation proceedings initiated before the labour authorities failed, whereupon the

appropriate Government referred the industrial dispute for adjudication to the Labour Court *vide* Reference No. F.24(1644)/2000-Lab.23648-53 in the following terms:

> *"Whether Sh. Rakesh.Kumar has abandoned his services or his services-have been terminated illegally and/or unjustifiably by the Management and if so, to what relief is he entitled and what directions are necessary in this respect?"*

6. Pursuant to the said reference, the respondent/workman filed a Statement of Claim before the Labour Court on 19.08.2000 seeking reinstatement with back wages and consequential benefits. The petitioner/Management contested the claim by filing its Written Statement on 11.05.2001, to which a rejoinder was filed by the respondent/workman on 05.09.2001. Evidence was thereafter led by both parties, the respondent/workman examining himself as Ex: WW-1/A (*hereinafter as WW-1*) and the petitioner/Management examining Shri Sanjay Kumar as MW1/A (*hereinafter as MW1*).

7. Upon conclusion of proceedings, the Labour Court passed the impugned Award dated 03.07.2010 holding that the cessation of service of the respondent/workman amounted to retrenchment effected in violation of Section 25F of the Industrial Disputes Act, 1947 (*hereinafter ID Act*) and accordingly directed reinstatement with 80% back wages from 04.08.1999 till the date of enforcement of the Award.

8. Aggrieved thereby, the petitioner/Management has instituted the present writ petition under Articles 226 and 227 of the Constitution of India. The Petitioner/Management states that it became aware of the impugned Award only upon receipt of notice dated 17.01.2013 issued in

implementation proceedings, pursuant to which a certified copy of the Award was applied for on 30.01.2013 and received on 06.02.2013.

SUBMISSIONS ON BEHALF OF PETITIONER

9. Learned counsel for the petitioner/Management submitted that the respondent/workman had merely been engaged on a piece-rate basis for stitching work and was not a regular employee of the Petitioner/Management. It was contended that the respondent/workman himself had admitted during cross-examination that he was working on a piece-rate basis, yet the Labour Court failed to appreciate the legal effect thereof while treating him as a "workman" within the meaning of the ID Act, 1947.

10. It was further submitted that there had been no termination of service by the petitioner/Management and that the respondent/workman had voluntarily left employment on 04.08.1999 after securing better employment elsewhere. In support thereof, reliance was placed upon Ex. MW1/2, purportedly recording the respondent/workman's intention to leave service voluntarily, and Ex. MW1/3, a receipt acknowledging payment of Rs. 2,000/- towards full and final settlement of dues. Learned counsel submitted that, despite observing that no serious doubt had been raised regarding Ex. MW1/3, the Labour Court erroneously concluded that the cessation of service amounted to retrenchment. According to the petitioner/Management, once the respondent/workman had voluntarily left service after accepting full and final settlement, the provisions of Sections 2(oo) and 25F of the ID Act, 1947 were inapplicable.

11. Learned counsel further contended that the Labour Court had ignored material documentary evidence, namely Ex. MW1/1, Ex. MW1/2 and Ex.

MW1/3, and had proceeded on conjectures in holding that the cessation of service constituted retrenchment.

12. It was also submitted that the Labour Court had erroneously relied upon the statement made on 16.07.2003 by the learned Authorised Representative to the effect that M/s Dayal Sons Selection had changed its business name to M/s Sanjay Garments. According to the petitioner/Management, the said statement had been made without proper instructions and was factually incorrect. Reliance was placed upon the cross-examination of MW1 to contend that M/s Dayal Sons Selection belonged to another proprietor and that MW1 had no knowledge regarding the affairs of the said concern prior to 1998. It was thus contended that there was no material on record to justify the conclusion that M/s Sanjay Garments was a continuation of M/s Dayal Sons Selection or that both concerns constituted the same establishment.

13. Lastly, learned counsel submitted that the impugned Award had become unenforceable in view of Section 19(3) of the ID Act, 1947. It was contended that the Award became enforceable with effect from 11.04.2011 and that the implementation proceedings initiated by the respondent/workman beyond one year therefrom were not maintainable. According to the petitioner/Management, the Award had consequently become incapable of implementation in law.

SUBMISSIONS ON BEHALF OF RESPONDENT

14. *Per contra*, learned counsel appearing on behalf of the respondent/workman supported the impugned Award and submitted that the findings returned by the Labour Court were based upon proper appreciation of the pleadings, documentary material and oral evidence led by the parties

and did not suffer from any perversity or patent illegality warranting interference in exercise of supervisory jurisdiction.

15. It was contended on behalf of the respondent/workman that he had been continuously working with the Management since the year 1988 under its supervision and control and that both M/s Dayal Sons Selection and M/s Sanjay Garments were being operated from the same premises at 2/25, Moti Nagar, New Delhi. Learned counsel submitted that the Respondent/Workman had been performing stitching work as directed by the Management and was drawing monthly wages, the last drawn wages being Rs. 2,600/- per month as admitted by the Petitioner/Management in its Written Statement. It was argued that the plea of piece-rate engagement did not negate the existence of employer-employee relationship and that the Labour Court had rightly held the respondent/workman to be a "*workman*" within the meaning of Section 2(s) of the ID Act, 1947.

16. Learned counsel further submitted that the Respondent/Workman had repeatedly been demanding statutory benefits including minimum wages, appointment letter and other legal facilities, pursuant to which disputes had arisen between the parties. It was contended that the services of the Respondent/Workman were abruptly terminated on 04.08.1999 without notice, Charge-Sheet, domestic enquiry or payment of earned wages for the months of July and August 1999. According to the Respondent/Workman, the termination was effected illegally and in retaliation to the demands raised for statutory benefits.

17. Refuting the plea of voluntary resignation and full and final settlement, learned counsel submitted that Ex. MW1/2 and Ex. MW1/3 were fabricated documents brought on record beyond the pleadings of the

Petitioner/Management. It was pointed out that MW-1 had admitted during cross-examination that the alleged resignation and full and final settlement had neither been pleaded in the Written Statement nor mentioned in the affidavit by way of evidence filed on behalf of the Petitioner/Management before the Labour Court. It was submitted that the Labour Court had rightly appreciated these circumstances while assessing the credibility of the defence set up by the Petitioner/Management.

18. Learned counsel also relied upon the statement made on 16.07.2003 before the Labour Court by the learned Authorised Representative appearing on behalf of the Petitioner/Management to the effect that M/s Dayal Sons Selection had changed its business name to M/s Sanjay Garments. It was submitted that the said statement constituted a binding admission and had rightly been taken into consideration by the Labour Court along with the other material available on record.

19. It was further contended that the Petitioner/Management had failed to establish compliance with the mandatory requirements of Section 25F of the ID Act, 1947 prior to the cessation of service of the respondent/workman. According to the Respondent/Workman, once the plea of voluntary resignation was disbelieved, the cessation of service necessarily fell within the ambit of retrenchment under Section 2(oo) of the ID Act, 1947, and the Labour Court had rightly held the retrenchment to be illegal for non-compliance with Section 25F of the ID Act .

20. Lastly, learned counsel submitted that the contention raised by the Petitioner/Management regarding unenforceability of the Award under Section 19(3) of the ID Act, 1947 was misconceived and devoid of merit. It was submitted that the respondent/workman had already initiated

proceedings for implementation of the Award and that the Petitioner/Management had approached this Court only thereafter. According to the respondent/workman, the Award had not ceased to remain enforceable in law.

ISSUE FOR CONSIDERATION

21. In the backdrop of the rival submissions and the findings returned by the Labour Court, the principal question which arises for consideration is whether the impugned Award suffers from any patent illegality, perversity or jurisdictional infirmity warranting interference by this Court in exercise of its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India.

ANALYSIS AND FINDINGS

22. The Court has heard counsel for the parties and perused the material placed on record. Opportunity was also granted to the parties to place on record any further judgments relied upon by them; however, no judgments have been filed.

23. At the outset, it is well settled that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is supervisory and not appellate in nature. This Court does not sit in appeal over the findings of the Labour Court, nor does it re-appreciate evidence or substitute its own findings on facts. Interference is warranted only where the adjudicating authority has acted without or in excess of jurisdiction, or where the Impugned Award suffers from patent illegality, perversity, or misapplication of settled principles of law. So long as the findings are based on appreciation of evidence and are plausible, no interference is called for merely because another view may also be possible.

24. The Supreme Court in the judgment of ***Syed Yakoob v. K.S. Radhakrishnan, 1964 AIR 477***, clarified the aforesaid position. The relevant part of the judgment is extracted hereunder :

> *"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.* ***There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the***

> ***Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised*** *(vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3).”*
>
> *[...Emphasis Supplied]*

25. Upon appreciation of the pleadings, documentary material and evidence led by the parties, the Labour Court returned findings to the effect that the Respondent/Workman had remained in continuous service for more than 240 days preceding the cessation of employment and that the cessation of his services amounted to “*retrenchment*” within the meaning of Section 2(oo) of the ID Act, 1947. The Labour Court also proceeded on the basis that M/s Sanjay Garments was continuing the business earlier carried on in the name of M/s Dayal Sons Selection and had participated in the proceedings in that capacity, which finding is disputed by the Petitioner/Management in the present proceedings. The Labour Court further held that the Petitioner/Management had failed to establish compliance with the mandatory requirements of Section 25F of the ID Act, 1947 prior to effecting the retrenchment and, consequently, held the retrenchment of the Respondent/Workman to be illegal and *void ab initio*. The Labour Court accordingly granted reinstatement with consequential benefits. The

operative portion of the **impugned Award** dated 03.07.2010 reads as under:

> ***RELIEF:-***
>
> *24. As the **termination of the services of this workman by the Management is held to be illegal and unjustified, therefore, the workman deserves reinstatement of services.***
> *25. On the point of back wages, the law is clear that it has to be given as damages to the workman. During the cross-examination of the workman, it had come on record that he is unemployed even despite his best efforts. He has also spent a lot of time and resources in prosecuting this case against the illegal and unjustified order of the Management. Therefore, this court thinks it fit to award him **80% of his back wages from the date of his alleged termination i.e. 04.08.1999 till the enforcement of this order.***
> *26. If by the time of enforcement of this order, the workman is found to have attained the age of superannuation and its reinstatement in service is not possible by force of law, then in that case, this workman be given all benefits of superannuation as if this workman superannuated while being in service without any effect of the order of retrenchment dated 04.08.1999.*
> *27. The reference is answered accordingly. A copy of the Award be sent to the Secretary (Labour) for necessary compliance. File be consigned to the Record Room after completing due formalities.*
>
> *[...Emphasis Supplied]*

26. The **principal issue** which now arises for consideration is whether the Labour Court committed any patent illegality or perversity in holding that the cessation of service of the respondent/workman did not result from voluntary abandonment of service or resignation coupled with full and final settlement, as alleged by the petitioner/Management, but constituted "*retrenchment*" within the meaning of Section 2(oo) of the ID Act, 1947, thereby attracting mandatory compliance with Section 25F thereof.

27. Before adverting to the principal issue regarding the nature of cessation of service of the Respondent/Workman, it is necessary to first examine the contention raised on behalf of the Petitioner/Management regarding the **existence of employer-employee relationship** between the parties. The Petitioner/Management has contended that the respondent/workman was merely engaged on a piece-rate basis for stitching work and, therefore, could not be treated as a "*workman*" within the meaning of Section 2(s) of the ID Act, 1947.

28. The definition of "*workman*" under Section 2(s) of the ID Act, 1947 is broad and inclusive in nature and encompasses persons employed to perform manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment are express or implied. The mode or basis of remuneration, whether monthly, daily or on piece-rate basis, is not determinative of the existence of an employer-employee relationship and does not, by itself, exclude a worker from the ambit of "workman" under the Industrial Disputes Act, 1947. It is well settled that a worker engaged on a piece-rate basis does not, for that reason alone, stand excluded from the protective framework of labour legislation. The relevant test for determining the existence of an employer-employee relationship is the test of control and supervision, namely, whether the employer exercises control not merely over the ultimate result of the work but also over the manner in which the work is performed.

29. In ***M/s Shining Tailors v Industrial Tribunal II, U.P., Lucknow, (1983) 4 SCC 464,*** while dealing with the status of piece-rated tailors and the test for determining employer-employee relationship, the Hon'ble Supreme Court observed as under:

"5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is made by piece-rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece-rate. If every piece-rated workman is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression 'workman' as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workman was the test of control and not the method of payment. Piece-rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single minded devotion to increase production which would be beneficial both to the employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen. However in the identical situation in Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments, Mathew, J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is shifted from and no longer rests exclusively or strongly upon the question of control. It was further observed that a search for a formula in the nature of single test will not serve the useful purpose, and all factors that have been referred to in the cases on topics, should be considered to tell a contract of service. Approaching the matter from this angle, the Court observed that the employer's right to reject the end product if it does not conform to the instructions of

the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision.....”

[.....Emphasis Supplied]

The aforesaid observations make it clear that the decisive test is not the basis of remuneration but the degree of control and supervision exercised by the employer over the manner of performance of work.

30. Applying the aforesaid principles to the facts of the present case, the Written Statement filed by the Petitioner/Management itself admitted engagement of the Respondent/Workman for stitching work at its establishment situated at 2/25, Moti Nagar, New Delhi and further recorded that he was drawing wages of Rs. 2,600/- per month, notwithstanding the plea that remuneration was being computed on a piece-rate basis. The respondent/workman, in his evidence, denied that he used to carry garments to his residence for stitching and stated that the work was being performed at the establishment itself and wages were paid at the end of each month. The Labour Inspector’s report dated 07.06.1999 also recorded the presence of five workers at the establishment during inspection. *MW-1*, in cross-examination, admitted that no appointment letter, attendance register or wage register had been maintained by the Petitioner/Management. There is also no material on record to indicate that the respondent/workman was free to undertake stitching work elsewhere in the manner ordinarily associated with an independent contractual arrangement. These circumstances cumulatively establish that the respondent/workman was working under the control and supervision of the petitioner/Management and that the mere fact

that remuneration was computed on a piece-rate basis could not, by itself, negate the existence of an employer-employee relationship. **The Respondent/Workman, therefore, squarely fell within the ambit of "*workman*" under Section 2(s) of the ID Act, 1947**. This Court accordingly finds **no infirmity** in the conclusion reached by the Labour Court regarding the existence of Employer-Employee relationship between the parties.

31. Before proceeding to the question of relief, it is necessary to deal with the contention of the Petitioner/Management regarding the relationship between M/s Dayal Sons Selection and M/s Sanjay Garments and the Respondent/Workman's alleged service from 1987 onwards. Upon consideration of the material on record, this Court finds that the evidence is not sufficiently clear or conclusive to justify a definitive finding that M/s Sanjay Garments was the legal successor of M/s Dayal Sons Selection or that both concerns constituted one establishment for all purposes. In his cross-examination, MW1 stated that he was only a contractor of M/s Dayal Sons Selection and had no other relationship with the said concern. He further stated that the address of M/s Dayal Sons Selection was 33/5, DLF Moti Nagar, whereas M/s Sanjay Garments was operating from 2/25, Moti Nagar, New Delhi, and also stated that he could not say whether M/s Sanjay Garments was the successor concern of M/s Dayal Sons Selection. Significantly, no documentary material was produced to conclusively establish either continuity or succession between the two concerns. This Court is also conscious of the statement made by the counsel for the Management before the Labour Court on 16.07.2003 to the effect that the Workman had initially joined M/s Dayal Sons Selection and that the

business thereafter came to be carried on in the name of M/s Sanjay Garments. However, the precise circumstances in which the said statement came to be made are not clear from the record, nor does the material indicate the extent of instructions or the context in which such statement was made. In these circumstances, this Court does not consider it appropriate to read the said statement as conclusively determining the precise legal relationship between the two concerns or as establishing uninterrupted service of the Workman from 1987 onwards. It is also material that the Workman has not produced documentary evidence in support of the alleged pre-1998 service with M/s Dayal Sons Selection, such as appointment letters, wage records, attendance registers, or other contemporaneous material. Accordingly, this Court does not consider it appropriate to return any concluded finding regarding the alleged service of the Workman with M/s Dayal Sons Selection prior to 1998.

32. However, the position regarding the period from July 1998 to August 1999 stands on a different footing altogether, inasmuch as the Petitioner/Management itself, both in its Written Statement and through the evidence of MW1, admitted that the Respondent/Workman had worked with M/s Sanjay Garments during the said period and was drawing wages of Rs. 2,600/- per month. The admitted period of service from July 1998 to August 1999, being a period of continuous service exceeding one year , is by itself sufficient to attract the protection of Section 25-F of the ID Act, 1947. In these circumstances, this Court is unable to affirm the broader finding returned by the Labour Court regarding the relationship between M/s Dayal Sons Selection and M/s Sanjay Garments or the alleged continuity of service of the Respondent/Workman prior to 1998. However, in view of the

admitted and proved period of service with M/s Sanjay Garments during the aforesaid period, which is sufficient in itself to attract Section 25-F of the ID Act, 1947, the ultimate conclusion regarding illegality of retrenchment for non-compliance with Section 25-F nonetheless remains sustainable in law.

33. In light of the aforesaid discussion, the principal issue which now arises for consideration is the nature and legality of the cessation of service of the respondent/workman.

34. In this context, it may briefly be noted that a **voluntary resignation** must constitute a conscious and unequivocal act on the part of the workman to sever the relationship of employment, whereas **abandonment of service** is ordinarily inferred from conduct reflecting an intention not to resume duties. **Section 2(oo)** of the ID Act, 1947 excludes from the ambit of "*retrenchment*" cases of voluntary retirement or resignation, retirement upon attaining the age of superannuation in terms of the contract of employment, termination consequent upon non-renewal of a contract of employment on its expiry, and termination on the ground of continued ill-health. In the present case, the petitioner/Management has sought to justify the cessation of service solely on the basis of alleged voluntary resignation and full and final settlement. The burden to establish such a plea rested squarely upon the Petitioner/Management and was required to be discharged through cogent and reliable material. Failing such proof, the cessation of service would ordinarily fall within the ambit of "*retrenchmen*t" under Section 2(oo) of the ID Act, 1947, thereby attracting the mandatory requirements of Section 25F thereof. The plea advanced by the petitioner/Management is therefore required to be examined in the backdrop of the surrounding circumstances emerging from the record.

35. The Petitioner/Management has principally relied upon three documents in support of its plea that the Respondent/Workman had voluntarily left service after accepting full and final settlement of dues: Ex. MW1/1, an application dated 05.07.1998 purportedly submitted by the respondent/workman seeking stitching work on piece-rate basis; Ex. MW1/2, a letter dated 04.08.1999 purportedly expressing his intention to leave service voluntarily; and Ex. MW1/3, a receipt dated 04.08.1999 acknowledging payment of Rs. 2,000/- towards full and final settlement of dues. The Labour Court noticed that the execution of Ex. MW1/3 was not seriously disputed by the Respondent/Workman during the cross-examination of *MW-1*. Proof of execution of a document, however, is distinct from proof of the voluntariness of the act which it purports to record. The issue, therefore, required examination in the light of the surrounding circumstances emerging from the record as a whole.

36. The factual backdrop preceding 04.08.1999 is relevant to this inquiry. Disputes had arisen between the parties regarding non-provision of statutory facilities including minimum wages and appointment letter. The Respondent/Workman had been raising such demands verbally from time to time and had made a complaint dated 25.05.1999 before the Labour Commissioner in that regard. Pursuant thereto, the Labour Inspector carried out an inspection of the premises of M/s Sanjay Garments on 07.06.1999 and found five workers present and working on the premises. The Labour Inspector's letter records that the Management did not appear before the Labour Department at the time fixed. The existence of these disputes regarding statutory entitlements in the period immediately preceding the cessation of service is a circumstance which this Court cannot lose sight of

while examining the contending contentions regarding the nature of that cessation.

37. The conduct of the parties immediately following the alleged resignation is also a significant surrounding circumstance. The record reflects that on 05.08.1999 itself, i.e., the very next day after the alleged resignation, a complaint was lodged through the Union before the Assistant Labour Commissioner alleging illegal termination on 04.08.1999, non-payment of wages for July 1999 and seeking reinstatement in service. The complaint specifically alleged that the Respondent/Workman had been removed for demanding statutory facilities. The immediacy of the complaint is itself significant , particularly since the allegation regarding non-payment of July 1999 wages stands directly inconsistent with Ex. MW1/3, which purports to record full and final settlement of all dues. This was followed by demand notices dated 09.08.1999 and 06.10.1999 addressed to M/s Dayal Sons Selection and M/s Sanjay Garments reiterating the demand for reinstatement and payment of dues. The record further reflects that despite repeated notices issued during conciliation proceedings, the Petitioner/Management neither appeared before the labour authorities nor submitted any documents or comments, and the Respondent/Workman was not taken back on duty. These circumstances are wholly inconsistent with the plea that the respondent/workman had voluntarily resigned after securing better employment and accepting full and final settlement of dues. The inconsistency is further compounded by the shifting nature of the defence set up by the Petitioner/Management, the cessation of service having been described at different stages as abandonment of service, voluntary leaving for a better opportunity, and resignation coupled with full and final

settlement. Viewed cumulatively, these circumstances materially undermine the credibility of the defence set up by the Petitioner/Management and support the conclusion reached by the Labour Court that the cessation of service on 04.08.1999 did not represent a genuinely voluntary severance of employment.

38. On the documents relied upon by the Petitioner/Management, *MW1* admitted in cross-examination that the factum of resignation and full and final settlement had neither been pleaded in the Written Statement nor mentioned in his evidence affidavit, which had proceeded exclusively on the plea of abandonment of service. A reading of the Written Statement also reflects that the case set up therein was only that the Respondent/Workman had abandoned service of his own accord for better emoluments elsewhere, with no reference whatsoever to resignation or full and final settlement. It is well settled that evidence cannot ordinarily travel beyond pleadings. However, the fact remains that the specific documents, Ex. MW1/2 and Ex. MW1/3, constituting the very foundation of the plea of voluntary resignation and settlement, were not brought on record until the stage of evidence, and that position stands admitted by *MW-1*.

39. There is a further circumstance on the face of the documents themselves which this Court cannot overlook. It was put to *MW-1* in cross-examination that Ex. MW1/1, Ex. MW1/2 and Ex. MW1/3 documents purportedly bearing different dates appear to have been written using the same pen. MW-1 stated that he could not say . When asked specifically whether the date on Ex. MW1/1 was in a different pen, MW-1 stated he could not say. The same answer was given with respect to Ex. MW1/2 and Ex. MW1/3. MW-1 further admitted that the signatures were obtained in his

presence on typed proformas at the time of leaving, that he could not recall the exact amount paid to the workman for the period of July and August 1999, and that the wage slips he claimed to have maintained had been destroyed long back. This Court does not record any finding of fabrication on the basis of these circumstances alone. Nevertheless, the cumulative effect of documents obtained on typed proformas, admitted destruction of wage records, inability of MW-1 to recall the amounts allegedly paid, and documents bearing different dates appearing to have been written using the same pen without any satisfactory explanation, materially weakens the evidentiary foundation of the defence set up by the Petitioner/Management.

40. Having regard to the aforesaid circumstances considered cumulatively, this Court is of the view that the conclusion reach ed by the Labour Court that the cessation of service of the respondent/workman on 04.08.1999 did not represent a genuinely voluntary resignation but amounted to retrenchment within the meaning of Section 2(oo) of the ID Act, 1947 **cannot be said to be perverse or based on no evidence.** Mere execution of Ex. MW1/3 was not conclusive of voluntary relinquishment of service, and the Labour Court was fully justified in examining the surrounding circumstances while determining the true nature of cessation of service.

41. Having held that the cessation of service of the Respondent/Workman on 04.08.1999 amounted to "*retrenchment*" within the meaning of Section 2(oo) of the ID Act, 1947, the question which next arises for consideration is whether the mandatory requirements prescribed under Section 25F of the said Act stood complied with.

42. Section 25-F of the ID Act, 1947, as it stands, reads as follows:

> *"**25F. Conditions precedent to retrenchment of workmen.-***
>
> *"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —*
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

43. The mandatory nature of Section 25F of the ID Act, 1947 has consistently been recognised in judicial precedents. In ***Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat (Haryana), (2010) 5 SCC 497***, the Hon'ble Supreme Court observed as under:

> *"we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated."*

44. Similar principles were reiterated in ***Krishna Bahadur v. Puran Theatre, (2004) 103 FACLR 146,*** wherein the Hon'ble Supreme Court held that compliance with Section 25F(b) is imperative and contravention thereof

renders the retrenchment *void ab initio* .

45. Under Section 25B of the ID Act, 1947, a workman who has worked for not less than 240 days during a period of twelve calendar months is deemed to be in continuous service for one year. In the present case, the Labour Court returned a categorical finding that the respondent/workman had worked for more than 240 days preceding the cessation of service, and no material has been placed on record by the petitioner/Management to dislodge the said finding.

46. Even Ex. MW1/3, taken at face value, merely records payment of Rs. 2,000/- towards alleged full and final settlement. At the admitted monthly wages of Rs. 2,600/- disclosed by the petitioner/Management itself, the said amount was plainly insufficient to satisfy the mandatory requirements of notice pay and retrenchment compensation contemplated under Section 25F of the ID Act, 1947. Significantly, Ex. MW1/3 itself purports to cover earned wages, leave wages, bonus and all other claims comprehensively.The amount reflected therein, therefore, cannot by itself constitute compliance with the statutory mandate of Section 25F of the ID Act, 1947 .

47. In these circumstances, the finding returned by the Labour Court that the retrenchment of the respondent/workman was effected in violation of the mandatory requirements of **Section 25F of the ID Act, 1947 is correct in law and does not warrant interference.**

48. The Petitioner/Management has also contented that the impugned Award dated 03.07.2010 has become incapable of implementation by virtue of Section 19(3) of the ID Act, 1947, on the ground that the Award became enforceable with effect from 11.04.2011 and that the implementation application filed by the Respondent/Workman was preferred beyond one

year therefrom, i.e., after 11.04.2012. The said contention cannot be accepted. It is the Petitioner/Management itself which has instituted the present writ petition assailing and seeking judicial interference with the very same Award dated 03.07.2010. Having invoked the writ jurisdiction of this Court against the Award, the Petitioner/Management necessarily proceeds on the basis that the Award continues to subsist and remain operative in law. The Petitioner cannot, in the same proceedings, simultaneously contend that the very Award which it has chosen to challenge has ceased to possess legal efficacy or enforceability. Such inconsistent pleas cannot be permitted to be advanced together. Once the Petitioner has itself treated the Award as subsisting for the purpose of seeking its quashing, it cannot simultaneously contend, for the purpose of resisting implementation, that the Award has become incapable of enforcement. The contention is, therefore, rejected on this short ground itself, without it being necessary to examine the issue any further on merits.

49. Having regard to the totality of the discussion aforesaid, this Court finds **no patent illegality, perversity or jurisdictional infirmity** in the conclusion reached by the Labour Court that the cessation of service of the respondent/workman on 04.08.1999 did not result from voluntary resignation or abandonment of service, but constituted retrenchment within the meaning of Section 2(oo) of the ID Act, 1947 effected in violation of the mandatory requirements of Section 25F thereof. The view taken by the Labour Court is borne out from the material available on record and **does not warrant interference in exercise of supervisory jurisdiction under Articles 226 and 227 of the Constitution of India.**

50. The question which survives for consideration is with regard to the

relief liable to be granted. While this Court has upheld the conclusion that the cessation of service of the Respondent/Workman amounted to illegal retrenchment in violation of Section 25-F of the ID Act, 1947, the said conclusion rests on the admitted and proved period of employment with M/s Sanjay Garments from July 1998 to August 1999. This Court has not affirmed the broader finding of the Labour Court regarding uninterrupted service of the respondent/workman prior to 1998 or the precise relationship between M/s Dayal Sons Selection and M/s Sanjay Garments. The cessation of service took place on 04.08.1999 and the present writ petition has remained pending since the year 2013. Having regard to the limited period of service proved on record, the considerable lapse of time, and the Respondent/Workman having either attained or being on the verge of attaining the age of superannuation, this Court is of the view that reinstatement at this stage would not be appropriate and that the relief granted under the impugned Award requires to be suitably moulded.

CONCLUSION

51. Applying the principle recognised in ***Bharat Sanchar Nigam Limited (BSNL) v. Bhurumal, (2014) 7 SCC 177*** that where reinstatement has become impracticable owing to efflux of time, monetary compensation may appropriately be awarded in lieu of reinstatement, this Court directs the Petitioner/Management to pay to the Respondent/Workman a consolidated **sum of Rs. 1,25,000/- in full and final satisfaction of the relief granted under the impugned Award, including reinstatement and consequential monetary benefits**, arising out of the illegal retrenchment held established in the present case. The said compensation has been determined having

regard to the proved period of service from July 1998 to August 1999 and the lapse of time since cessation of employment.

52. The aforesaid amount shall be paid within a period of eight weeks from the date of receipt of a certified copy of this judgment, failing which it shall carry simple interest @ 8% per annum from the date of expiry of the said period till actual payment. In the event of any dispute regarding compliance, it shall be open to the Respondent/Workman to avail remedies in accordance with law.

53. The Writ Petition, along with all pending applications, if any, stands disposed of in the aforesaid terms.

SHAIL JAIN, J

MAY 14, 2026
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