

**IN THE COURT OF SHRI LOKESH KUMAR SHARMA
ADDL. DISTRICT & SESSIONS JUDGE
PRESIDING OFFICER : LABOUR COURT – XIX
DWARKA COURTS : DELHI**

LIR No. 1937/16

1. Sh. Ved Prakash

S/o Sh. Kishori Lal

2. Sh. Sanjay

S/o Sh. Nand Lal

Both : R/o 10751, Jhandewalan
Road, Nabikarim,
Delhi – 110 055.

Through: Progressive National Labour
Union (Regd.)
205, Pratap Khand,
Vishwakarma Nagar,
Delhi – 110 095.

... Workmen

Versus

M/s. Frigori Fico Allana Ltd.

MCD Slaughter House
Ghazipur
Delhi – 110 096.

... Management

Date of institution of the case : 11.03.2015

Date of passing the Award : 14.12.2018

A W A R D:

1. The Deputy Labour Commissioner, Delhi exercising his powers conferred by virtue of Section 10(1)(c) and 12(5) of Industrial Dispute Act, 1947 read with Notification No.F-1/31/616/ESTT./2008/7458 dated 03.03.2009 had sent the following reference dated 09.03.2015 to this Court for determination:

“Whether services of Sh. Ved Prakash S/o Sh. Kishori Lal Ji and Sh. Sanjay S/o Sh. Nand Lal have been terminated illegally and / or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws / Govt. Notifications and to what other relief are they entitled and what directions are necessary in this respect?”

2. Pursuant to service of notice of reference, both the workmen had appeared and filed their joint statement of claim claiming therein that both the workmen were working with the management as Butchers since 10.12.2009 and their last drawn salary was Rs. 8,000/- per month. Initially, the slaughter house was being run by MCD itself. However, later on, it was transferred to the present management on contract basis.

3. It was stated further that the management had deprived the workmen of the statutory facilities such as: minimum wages, ESI, P.F., payslip, bonus etc. and when the workmen had demanded the

same, only assurances were given to them but not the actual benefits. Workmen had also sent demand notice dated 04.08.2012 through their union to the management by speed post but it had neither replied nor complied with the same. Thereafter, on 13.08.2012, the union had filed a case before the Conciliation Officer relating to the general demands of the workmen due to which the management got annoyed and had terminated their services abruptly on 27.12.2012 in an illegal and arbitrary manner. This action of the management was stated to be in violation of provisions of Section 33 (1) and Section 33-C (2) of the Industrial Disputes Act, 1947.

4. Hence, the workmen had also filed a complaint before the Conciliation Officer on 11.08.2014, however, the management despite causing its appearance, had declined to take them back on job. Hence, it was prayed by the workmen that an award be passed in favour of workmen and management be directed to reinstate them in service with continuity of service and full back wages along with other consequential benefits.

5. Notice of this statement of claim was sent to the management which was also duly served upon it and management had also appeared to contest the claim of the workmen on merits and filed its written statement on record wherein it had denied the status of the workmen of that being 'workman' as defined under Section 2(s) of Industrial Dispute Act, 1947. Even, the relationship of an employer and employee between the management and the present workmen was

also denied by it.

6. On merits, all the factual contents of the statement of claim which were neither specifically admitted to be correct nor essentially and purely constituted matter of record, were denied by the management as wrong and incorrect.

7. To this written statement, the workmen had also filed their replication / rejoinder wherein all the objections of the management were denied as incorrect and they had reiterated the contents of their statement of claim as correct.

8. On the pleadings of the parties, the Ld. Predecessor of this Court vide order dated 19.03.2016, was pleased to frame the following issues: -

1. Whether any relationship of employer and employee existed between the parties? OPW

2. Whether the management illegally and/or unjustifiably terminated services of the claimant? OPW

3. Relief.

9. In order to discharge the onus of issues, the workmen had appeared in the witness box as WW1 and WW2 respectively and had placed on record their examinations-in-chief by way of affidavits Ex. WW1/A and Ex. WW2/A respectively wherein they had reiterated the contents of their statement of claim on solemn affirmation.

10. Besides this, the workman **Sh. Ved Prakash** had also placed on record the following documents: -

1. Photocopy of I. Card of the workman issued by MCD as Ex. WW1/1.
2. Copy of representation dated 04.08.2012 on the letterhead of the union as Ex. WW1/2 along with copy of its postal receipt as Ex. WW1/3.
3. Copy of general demand notice dated 13.08.2012 as Ex. WW1/4.

11. The workman **Sh. Sanjay** had also placed on record the following documents: -

1. Photocopy of I. Card of the workman issued by MCD as Ex. WW2/1.
2. Copy of representation dated 18.06.2012 on the letterhead of the union as Ex. WW2/2.
3. Copy of representation dated 04.08.2012 on the letterhead of the union as Ex. WW2/3 along with copy of its postal receipt as Ex. WW2/4.
4. Copy of general demand notice dated 13.08.2012 as Ex. WW2/5.
5. Photocopy of another I. Card of the workman issued by MCD as Ex. WW2/6.

12. Both the workmen during their cross-examination had categorically stated that they had no document to show that they were employees of the management. Both of them did not know any M/s. Pal Enterprises. It was also denied by them that they were working

with M/s. Pal Enterprises since December, 2012 or that they had voluntarily left their services of M/s. Pal Enterprises in January, 2013 after settling their dues in full and final.

13. Although the workman **Sh. Ved Prakash** had volunteered that he had taken the salary from the management for the month of January, 2013 but he could not produce any document to that effect. He had also admitted his signatures on document Ex. WW1/XM1 which is full and final receipt executed by the workman in favour of M/s. Pal Enterprises. Similarly, he had also admitted his signatures on payment voucher Ex. WW1/XM2. Other, formal suggestions were denied by him as wrong and incorrect. However, it was admitted by him that he had not served any demand notice upon the management after termination of his job.

14. Similarly, workman **Sh. Sanjay** had also admitted his signatures at point A of document Ex. WW2/XM1 which is full and final receipt executed by the workman in favour of M/s. Pal Enterprises. However, he had denied his signatures on payment voucher Mark WW2/XM2. Other, formal suggestions were denied by him as wrong and incorrect. However, it was admitted by him that he had not served any demand notice upon the management after termination of his services.

Thereafter, workmen' evidence was closed.

15. In rebuttal, the management had examined two witnesses to prove its stand. MW-1 is Sh. Ashfaq Manzer, Manager (HR) and

MW-2 Sh. Madhuri Sharan Mishra, Handwriting expert who had placed on record, their examinations-in-chief by way of an affidavit Ex. MW1/A and Ex. MW2/A wherein MW-1 had reiterated the stand of management as taken in the written statement on solemn affirmation.

16. MW-2 had submitted that the signatures appearing at point D were similar to admitted signature point A1 to A3. He had also placed on record his opinion in the form of CD Ex. DW2/1.

17. During his cross-examination conducted by the Ld. AR for the workmen, it was admitted by MW-1 that earlier the slaughter house was running at Sadar Bazar Eidgah before its shifting to Gazipur. However, it was denied by him that all the workmen working at Eidgah were also transferred to Gazipur when Slaughter House was transferred and he could not tell if any demand letter Ex. WW1/2 was ever received by the management or if the management had replied the same or not.

18. During his further cross-examination conducted by the Ld. AR for the workmen on 16.12.2017, MW1 had denied the suggestion that workmen were marked absent despite their presence at the duties or that MW1 had filed a false affidavit at the behest of management. Other, formal suggestions were also denied by him as wrong and incorrect.

19. Similarly, MW-2, during his cross-examination conducted by Ld. AR for the workmen had admitted that he had no Degree or

Diploma in examining the handwriting and till date of his deposition, he had given only one adverse opinion against his own client which was not filed by his client in the Court. Other, formal suggestions were also denied by him as wrong and incorrect.

Thereafter, the management's evidence was also closed.

20. In the light of aforesaid testimonies of the parties, my issue-wise findings are as under: -

ISSUE NO. 1: Whether any relationship of employer and employee existed between the parties? OPW: As observed above, the workmen had categorically admitted that they were not in possession of any document to show their relationship with the management. Hence, both the workmen have miserably failed to discharge the onus to prove this issue which is accordingly answered in negative and is decided in favour of the management and against the workmen holding that there was no employer and employee relationship between the parties.

ISSUE NO. 2: Whether the management illegally and/or unjustifiably terminated services of the claimant? OPW: In view of my findings to the *Issue No. 1* above, once the workmen have failed to establish their relationship of an employee-employer between them and the management, then the question of termination of their services by the management either in an illegal or unjustifiable manner does not arise at all. Accordingly, this issue is also answered in negative and is decided in favour of the management and against the

workmen.

ISSUE NO. 3 – Relief: In view of my findings to *Issues No. 1 and 2* above, the statement of claim as filed by the workmen is dismissed being devoid of any merits.

Award is accordingly passed. Reference stands answered in aforesaid terms. Copy of award be sent to Labour Commissioner for publication. File be consigned to record room.

***ANNOUNCED IN OPEN COURT
on 14th Day of December, 2018***

**(Lokesh Kumar Sharma)
Addl. District & Sessions Judge
Presiding Officer, Labour Court-XIX
Dwarka Courts, New Delhi**