

IN THE COURT OF Dr. SURENDER MOHIT SINGH
PRESIDING OFFICER: LABOUR COURT-08
ROUSE AVENUE DISTRICT COURTS: NEW DELHI
LIR No. 1342/23
CNR No. DLCT13-005412-2023

In the matter of:

Shri Dambarudhar Sankhua

S/o Lt. Sh. Ram Chander Sankhua,
R/o H.no. 468, Gali no.8,
Ajay Nagar, Ismailpur, Faridabad,
Haryana.

Through:

Universal Proutist Labour Federation (regd.)
In front of A-92, Okhla Phase-II,
New Delhi-110020.

...Workman

Versus

1. M/s Graphic & Paper Products,
A-199, Back Side, 1st floor,
Okhla Industrial Area, Phase-II,
New Delhi-110020.

...Management

Date of Institution	:	12.10.2023
<u>Date of Award</u>	:	<u>22.11.2025</u>

A W A R D

1. Reference under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947 has been received from Deputy Labour Commissioner, South-East District, A-wing, 1st floor, Room no.116 to 123, Pushp Bhawan, Pushp Vihar, Madangir, New Delhi-110062 setting out following dispute for adjudication by the Court:

“Whether the services of workman Shri Dambarudhar Sankhua, S/o Lt. Shri Ram Chander Sankhua, mob no.9871689957; 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?”

2. The present industrial dispute arises out of the alleged illegal termination of the services of the claimant by the management. The claimant alleges that he was working with the management since 17.11.2017 as “Machine Operator” and his last drawn salary was Rs.24,000/- p.m. He further alleges that management never provide any legal facilities like bonus, yearly and weekly holiday, appointment letter etc. to him. He further alleges that due to his repeated request to provide legal facilities, the management became annoyed and illegally terminated his services on 31.08.2022 without payment of his wages for the period 01.08.2022 to 30.08.2022. He further alleges that his services were terminated without any notice and domestic enquiry. He further alleges that during the course of employment, management obtained his signatures on blank papers, vouchers etc. He further alleges that after termination of his services, on 01.09.2022, he served a demand notice but management neither reinstated him nor replied the same. Subsequently, he approached the Labour Office but no settlement was arrived.

3. He further alleges that since termination, he is unemployed and facing hardships. The claimant prayed for reinstatement with continuity of service and other consequential

benefits including full back wages.

4. Management i.e. M/s Graphic & Paper Products filed written statement contesting the claim stating that claimant was hired on a temporary basis at the post of “Offset Operator” on 19.01.2019 and later on, on 07.03.2019 he was permanently employed by the management. It is further stated that claimant worked with the management till 18.08.2022 and took a holiday on 19.08.2022, however, thereafter, never reported back to work despite calling back on duty telephonically and through whatsapp by the management. It is further stated that claimant was paid an advance salary of Rs.15000/- for the period August, 2022 after deducting the amount of Rs.,13,600/- as the claimant was absented from his work for 17 days. It is further stated that the wages of the claimant was duly paid and nothing is outstanding against management. It is prayed that present claim is not maintainable and liable to be dismissed.

5. Thereafter, workman filed rejoinder wherein denied the averments made in WS and accordingly, pleadings were completed and following issues were settled on 07.08.2024:

- 1. Whether the claimant has abandoned the job on his own w.e.f 19.08.2022? OPM*
- 2. If issue no.1 is decided in favour of claimant whether his services have been terminated illegally or unjustifiably by the management? OPW.*
- 3. Relief.*

6. Shri Dambarudhar Sankhua examined himself as WW1 and tendered his evidence by way of affidavit **Ex.WW1/A** and relied upon following documents:

Sr. No.	Identification Mark	Description
1.	Ex.WW1/1 (OSR)	Photocopy of General demand notice dated 24.07.2020.
2.	Ex.WW1/2 (OSR)	Photocopy of postal receipt.
3.	Mark A	Photocopy of demand letter dated 01.09.2022.
4.	Ex.WW1/4	Original Postal receipt w.r.t demand letter dated 01.09.2022.
5.	Ex.WW1/5 (OSR)	Photocopy of complaint dated 05.09.2022 filed before Conciliation Officer, Pushpa Bhawan, Pushp Vihar, New Delhi.
6.	Ex.WW1/6 (OSR)	Photocopy of I-card of claimant.

7. WW1 was cross-examined at length by proprietor of the management. Relevant extract of his cross-examination are as under:

“I was working in the management as Machine Operator. I was engaged initially in the management as Machine Operator. I was appointed at Rs.18000/-p.m initially. Only, I was the Machine Operator with the management. There were 26 employees working with the management apart from me. My office timings were from 9 am to 5.30 pm. Whenever I remained absent, the management hire some independent person to work on my behalf. At this stage, witness is shown one document (attendance record) relied upon by

*management along with WS and asked whether the said document is written in the handwriting of WW1? Witness replied that it seems that the said document is in his writing, however, he is not sure whether the said document is in his own handwriting. The said document is now marked as **Mark X1**. Currently, I am unemployed.*

It is correct that I can telephonically/physically informed the management about any complaint/dispute within the management. I have informed the management about non-receiving of my salary and over time for August, 2022. My salary was credited directly in my account. The management used to pay my salary and overtime in part installments. The management has paid all my salary before August, 2022. My services were terminated by the management. I joined in the management in the year 2017. The management has given me appointment letter in 2019. I do not have any proof that I joined in the management in the year 2017. Vol. In the year, 2017, the management used to pay my salary in cash. I do not have any cash receipt. Vol. The cash receipt/voucher remains with the management. The management never paid me any advance payment. I was not doing the workman of machine maintenance in the management. Vol. I was machine operator.

I cannot say whether I have received Rs.10000/- on 06.08.2022 from the management in my account. It is correct that I have received Rs.11000/- on 18.08.2022 and Rs.2000/- on 28.08.2022 from the management in my bank account”.

8. Thereafter, on 12.02.2025, WE stands closed and matter was listed for ME.

9. Management examined Mr. Vijay Kumar, proprietor as MW1 who tendered his evidence by way of affidavit Ex.MW1/A and relied upon following documents:-

Sr. no.	Identification Mark	Description
1.	Ex.RW1/1	Temporary appointment letter.
2.	Ex.RW1/2	Permanent appointment letter.
3.	Ex.RW1/4	Attendance record.
4.	Ex.RW1/5 (colly)	Salary slips.
5.	Mark A	Copy of voucher.
6.	Mark C	Copy of ledger account.
7.	Mark B (colly 9 pages)	Copies of bank statement.
8.	Mark M-1	Copy of whatsapp screenshot.

10. MW1 was cross-examined at length by AR for the workman. Relevant extract of his cross-examination are as under:

“Q. I put it to you that is it correct that workman was appointed by the management on 17.11.2017?

A. It is wrong. Workman was appointed in January, 2019.

The management has not received demand notice dated 24.07.2020. It is correct that the management has received document dated 01.09.2022

(Mark A). It is correct that the management is aware that workman has filed complaint dated 05.09.2022 before Labour Inspector. I do not remember whether the management has filed reply to the complaint of the workman...

It is correct that on 12.09.2022, management sent a whatsapp message wherein it is stated that workman need not to come in the office for work and management will sent a termination letter in this regard. The said fact is mentioned in Mark M-1 at page no.4. It is correct that the management used to credit the salary of the workman in his bank account. The management had given a sum of Rs.50000/- to workman as a loan advance by way of cash. Workman had not given any application for granting of said loan. Vol. He verbally asked. The management does not maintain the advance register... Due acknowledgment/signature used to be taken from the employees after crediting salary in his account. I can produce the payment receiving register for the period April, 2022 to September, 2022.

I have not not produced the payment receiving register for the period April, 2022 to September, 2022 as the same was misplaced... I do not know whether I have filed any additional evidence affidavit before Deputy Labour Commissioner”.

- 11.** Thereafter, on 08.05.2025, management evidence was closed and matter was listed for final arguments.
- 12.** Final arguments heard.

Findings:-

Issue no.1-

Whether the claimant has abandoned the job on his own w.e.f 19.08.2022? OPM

13. The burden to prove this issue is upon the management.

14. The legal principle is well established that abandonment of service is a question of fact and intention. It is not a mere absence, but an absence accompanied by an intention to not return to employment. The burden of proof to establish this intention initially lies on the employer. However, once the employer establishes a case of unexplained absence, the onus shifts to the employee to prove that his absence was justified and that he had no intention to abandon service.

15. For abandonment to be established, there must be clear evidence of the workman's intention to relinquish his position which often demonstrated through prolonged absence without valid justification.

16. Further abandonment has to be seen from facts and circumstances of each case.

17. The management's case rests that claimant had abandoned his job w.e.f 19.08.2022. However, management's own evidence particularly the whatsapp chat (Mark M1) completely undermines its case.

18. The whatsapp message shows a continuous communication between the claimant and the management well after 19.08.2022. The claimant sent message on 22.08.2022, 27.08.2022 and 29.08.2022. The management itself was actively

engaging with him, asking “Kahan” on 29.08.2022 and stating that the claimant was not receiving calls.

19. This pattern of communication is completely inconsistent with the idea of abandonment. An employee who has abandoned his job and severs all ties, will do not continue to communicate with his employer about his situation.

20. Additionally, during cross-examination, MW1 admitted that on 12.09.2022, the management sent a whatsapp message stating “You need not to come in future” and that a termination letter would be sent. This is a clear unilateral act of termination by the management. It is legally inconsistent for the management to argue abandonment while simultaneously issuing a termination notice. The act of termination admits that an employment relationship existed until the management chooses to end it.

21. Furthermore, the documentary evidences relied on by the management are also weak. The attendance record (Ex.RW1/4) is a printed format with no signatures to authenticate it. The appointment letter (Ex.RW1/1) is also disputed as the signature mentioned on it does not matched with the other signatures of the claimant on record.

22. The failure to produce the payment receiving register after undertaking to do so also invites adverse inference against the management u/s 119 (g) of BSA, 2023. It can be presumed that the said register, if produced, would have been unfavourable to the management’s case.

23. As discussed above, I am of the considered opinion that the management has failed to discharge its burden.

Accordingly, this issue is decided against the management and in favour of the claimant.

Issue no.2.

If issue no.1 is decided in favour of claimant whether his services have been terminated illegally or unjustifiably by the management? OPW.

24. Since the claimant did not abandon his job, his absence from work after a certain point was treated by the management as a misconduct. The termination, as admitted by MW1 through the whatsapp message on 12.09.2022 and the subsequent termination letter was on the grounds of “despite several calls and messages no response received”. This constitutes termination for misconduct. For such a termination to be legal, the management was obligated to follow the principles of natural justice i.e. holding a fair and impartial domestic enquiry, issuing a charge-sheet, providing the employee a reasonable opportunity to be heard and defend himself and conducting the enquiry in accordance with principles of natural justice.

25. In the present case, the management did none of above. There is no evidence on record of a show cause notice, charge-sheet or an enquiry. The termination was summary and arbitrary.

26. The management has failed to justify that the termination was legal.

27. Section 25F of Industrial Disputes Act, 1947 provides conditions precedent to retrenchment to workman as under:

25F. Conditions precedent to retrenchment of workmen.

28. *“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 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.”

29. Section 25F of the Industrial Disputes Act mandates that an employer must provide one month's notice or wages in lieu of notice and compensation equivalent to 15 days' average pay for every completed year of service before retrenching an employee.

30. In *Devinder Singh v. Municipal Council, Sanaur (2011 (6) SCC 584)*, the Hon'ble Supreme Court observed in paragraphs 19 to 21 as under:

“19. Section 25 couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays

down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F (a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative--State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610, Bombay Union of Journalists v. State of Bombay AIR 1964 SC 1617, State Bank of India v. N. Sundara Money (supra), Santosh Gupta v. State Bank of Patiala (1980) 3 SCC 340, Mohan Lal v. Bharat Electronics Ltd.(1981) 3 SCC 225, L. Robert D'Souza v. Southern Railway (supra), Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court (1980) 4 SCC 443, Gammon India Ltd. v. Niranjana Dass (1984) 1 SCC 509, Gurmail Singh v. State of Punjab

(1991) 1 SCC 189 and Pramod Jha v. State of Bihar (2003) 4 SCC 619.

21. In Anoop Sharma v. Executive Engineer, Public Health Division, Haryana (supra), the Court considered the effect of violation of Section 25F, referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions contained in Section 25-F (a) and (b) should ordinarily result in his reinstatement.”

31. In view of above settled position of law, coming to the facts of the present case. The management's defense that the claimant was negligent and undisciplined prior to August, 2022 is irrelevant as no action was taken on those grounds at that time. The management cannot use past allegations to retrospectively justify a termination carried out in September, 2022.

32. Further management has not conducted any domestic enquiry as no domestic enquiry report produced on record to substantiate the allegations.

33. In the absence of any documentary proof such as warnings, complaints or inquiry report, the management's claim remains unsubstantiated.

34. The evidences on record clearly shows that no notice/ wages in lieu of notice and retrenchment compensation was given to the workman prior to termination of his services by management.

35. As discussed above, I am of the considered opinion that the management had violated the provision of Section 25F of Industrial Disputes Act and consequently, illegally terminated the

services of the workman. Accordingly, this issue is also decided in favour of claimant and against the management.

Claim for Back Wages:-

36. In *U.P. SRTC Ltd. v. Sarada Prasad Misra, (2006) 4 SCC 733*, Hon'ble Supreme Court has held as under:

"16. From the above cases, it is clear that no precise formula can be adopted nor "cast-iron rule" can be laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order."

37. It is a well settled law that reinstatement with full back wages is not to be granted automatically in case of illegal termination and Labour Court can mould the relief by granting lump sum compensation in lieu of reinstatement and back wages as held in (i) *Municipal Council Sujjanpur Vs. Surinder Kumar*

2006 LLR 662; (ii) Nehru Yuva Kendra Sanghathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709; (iii) Vinod Kumar & Ors. Vs. Salvan Public School & Ors. W.P.(C) 5820 Dated 17.11.2014.

38. Accordingly, I deem it appropriate to grant compensation to the workman instead of reinstatement with full back wages. **Upon considering the length of service and last drawn wage of workman i.e. Rs.24000/- p.m, a lump sum amount of Rs.4,50,000/- is awarded to workman as compensation.**

39. Amount of compensation be paid to claimant within two months from the date of award failing which management shall also pay interest @ 6% per annum on aforesaid amount from the date of award till the date of realization.

40. Reference stands answered in aforesaid terms.

41. Copy of award be sent to Deputy Labour Commissioner, South-East District, A-wing, 1st floor, Room no.116 to 123, Pushp Bhawan, Pushp Vihar, Madangir, New Delhi-110062 for publication.

42. Judicial file be consigned to record room.

**ANNOUNCED IN THE OPEN COURT
on 22.11.2025.**

**(Dr. Surender Mohit Singh)
District Judge,POLC-VIII
RADC/New Delhi**