

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-
II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 21/2019

Date of Passing Award- 1st May, 2023

Between:

Smt. Naresh & 02 Ors.
As represented by MCD General Mazdoor Union,
C/o Room No. 95, Jam Nagar House,
Shahjahan Road, New Delhi-110011

Workman

Versus

The commissioner
East Delhi Municipal Corporation,
Udyog Sadan, Plot No. 419,
Patparganj Industrial Area,
Shahdra, Delhi-110032

Management

Appearances:-

Shri B.K. Prasad, Ld .A/R for the claimant.

Shri Arvind Kumar, Ld. A/R for the management.

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Tarus Officer Institute, Through- Honorary Secretary, The mall, Delhi Cantonment, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-420112/203/2018 (IR(DU)) dated

10.01.2019 to this tribunal for adjudication to the following effect.

“ Whether the Smt. Naresh W/o Late Hira Lal, Smt. Rajesh Devi W/o Late Virendra Singh & Smt. Omwati w/o Late Sukhbir Singh are entitled for regular post of Mali w.e.f. 16.09.2009 with all consequential benefits including regular pay scale to each of the workmen instead of muster roll Mali? If yes, what directions are necessary in this respect?”

It has been stated in the claim petition that the claimants of this proceeding are working under EDMC which came in to existence after trifurcation of MCD to EDMC,SDMC&NDMC. (now unified and merged by notification dt19th May 202). They have been appointed as daily rated/ muster roll Malis on compassionate ground w. e. f. 16.09.2009, for the death of their husbands during service, who were the regular employees of the management. The appointment of the claimants on daily wage basis is illegal and they are entitled to be appointed on compassionate ground as regular employees and entitled to all the benefits available to the regular employees. Giving details of the employee status of their deceased husbands including the date of their death and post held at that time, the claimants have prayed for a direction to the management to appoint them as regular Malis w. e. f. 16.09.2009 with all consequential benefits and regular pay scale applicable to the said posts.

It has been stated that the dispute was espoused by the union and raised before the conciliation officer. Though steps were taken for conciliation, the same failed and the appropriate Govt referred the dispute to this Tribunal for adjudication. Hence this proceeding.

The management appeared and raised various objection including maintainability of the proceeding. It has been admitted that the husbands of the claimants through whom they are claiming compassionate appointment were the regular employees of the Management. It is true that on the death of a regular employee while in harness, one of the family member is entitled to compassionate appointment in a regular group C post subject to fulfillment of the prescribed criterion and availability of vacancy in the limited percentage as prescribed in the notification issued by

DOP&T. the dependents of a regular employee who died in harness can apply for compassionate appointment which is limited to 5% of the annual direct Recruitment vacancies as decided by DOP&T. Thus, the compassionate appointment in all death cases can not be claimed as a matter of right and the same is regulated by the procedure and notification issued by the Govt. so far as the case of the claimants are concerned they have not been appointed on daily wage or on temporary Muster Roll as pleaded by them. The facts stated are misleading. In fact the claimants have been appointed on contract basis which is clearly evident from the documents filed. It is true that the dependants of a deceased employee has a right to apply for compassionate appointment against regular post as per the policy of the Govt. but the policy does not guarantee regular appointment to all such applicants which is limited to 5% of the regular vacancies created in a calendar year. Since good no of applications are received in a year for such compassionate appointment, the Management to obviate the difficulty and in order to help the family members of the deceased employee brought out a policy of it's own to give appointment to one of the family member of the deceased employee on contractual basis which is to be renewed year after year, subject to the satisfactory performance. This scheme is independent of the compassionate appointment scheme of the Govt which is limited to 5% of the annual regular vacancies in group C cadre. The persons so appointed have no right to claim the status of regular employees. The management has also denied the claim for retrospective appointment on regular posts. Since the claimants have been granted contractual employment for want of vacancy under 5% quota, their claim is unjustified and liable to be dismissed.

On these rival pleadings the following issues were framed for adjudication.

ISSUES

- 1-whether the proceeding is maintainable.
- 2- whether the claimants appointed on compassionate ground as daily rated Muster Roll employees are entitled to regular post of Mali w. e. f. 16.09.2009.
- 3-to what other relief the claimants are entitled to.

The claimants of the proceeding did not testify as witnesses. In stead the president of the MCD General Mazdoor Union who is the AR of the claimants too testified as WW1. He relied and filed few documents marked in a series of Ext WW1/1 to WW1/4. Similarly the Administrative Officer of the management has been examined as MW1. He also produced the circulars issued by the management from time to time relating to implementation of compassionate appointment scheme as a welfare measure. The documents have been marked as MW 1/1 TO MW1/3.

At the outset of the argument the learned AR for the management challenged the maintainability for want of espousal. He also argued that the entire claim is based upon misconceived facts and the claimants are asking for a relief as a matter of right. The management being a corporation is bound by Govt orders and circulars and can not travel beyond the same. No injustice was meted to the claimants at any point of time .rather their interest was taken care of by giving them contractual appointments to save the family of the deceased employee from misery. The welfare scheme lunched by the management has well taken care of them and they have unjustifiably claimed appointment as regular employees.

On the other hand the learned AR for the claimants argued that as per the order and notification of DOP&T, a family member of a regular employee, who dies while in service, is entitled to compassionate appointment as regular employee. In this case since the claimants have been given appointment on compassionate ground, can not be so appointed as daily rated muster roll employees. They should have been appointed as regular employees. The circular or any order issued by the management being opposed to the scheme framed by DOPT can not be given effect to. The Industrial adjudicator is empowered to interpret the said circular and grant appropriate relief to the claimants. He there by argued to reject the circular of the management and issue direction in terms of the compassionate appointment notification issued by the DOP&T.

In view of the argument advanced, the short question which is required to be answered is if the claimants are entitled to be treated as regular employees with retrospective effect i.e from the date of their initial appointment. The admitted facts as per the pleadings of both the parties are that the husbands of the claimants through whom they are claiming compassionate appointment were

the permanent and regular employees of the management and at the time of their death, they were working as permanent Malis. It is also admitted by both the parties that the claimants have been appointed on compassionate ground since 16.09.2009. only dispute is that the claimants are describing the appointment on daily wage basis and the management while denying the same has stated that the appointment is on contractual basis.

FINDINGS

Issue No 1

The maintainability has been challenged by the management on the ground that the dispute is not an Industrial Dispute for want of espousal and the union representing the claimants is not the recognized Union of EDMC. But the witness for the claimants who is none but the president of MCD General Mazdoor Union, while giving evidence, proved the letter of espousal as ext WW1/4 and added that the union in its meeting espoused the cause of the claimants and authorized him to represent the claimants. During course of argument the learned AR for the claimants also pointed out that before bifurcation of MCD, this union was the recognized union and continued to represent the workers even after trifurcation. Now that the MCD has again been unified, this union is the recognized union. This argument is accepted in absence of any other evidence adduced by the Management. The issue is answered in favour of the claimant.

Issue No 2&3

The grievance of the claimants is that, though they have been appointed in the management on compassionate ground after the death of their husbands, who were regular employees of the management, the later treated them unfairly by giving appointment as daily rated muster roll employees in stead of regular employees. This is an unfair labour practice and stands contrary to the office memorandum dt 09/10/1998 and the Scheme for Compassionate Appointment under Central Government issued by the Ministry of Personnel, Public Grievance and Pension (DOP&T). Under this scheme, all the appointments are to be made against regular vacancies and persons so appointed are to be taken as regular employees of the establishment. Besides adducing oral evidence the claimants have filed the copy of the above mentioned scheme

of DOP&T as ext WW1/2 and the office order relating to the appointment of the claimants as ext WW1/1.

The rival stand of the management in this regard is that the claimants were neither appointed under the scheme of compassionate appointment issued by DOP&T, nor their appointments are as daily rated Mustor Roll employees. While filing two circulars relating to the welfare scheme of the management to give support to the family of the deceased employees as ext MW 1/3, the management has adduced evidence through MW1 to say that the compassionate appointments are made as per the scheme of DOP&T. but the appointments are limited to 5% of the regular vacancies created for a calendar year. Hence all the applications received in a year can not be accommodated against the said 5%. Hence , as a welfare measure, the MCD has issued circular to give appointment to one of the family member of the deceased employee as daily wage workers and to consider their cases under the compassionate appointment scheme in phased manner subject to fulfillment of eligibility. This circular issued on 11.10.2007 was later on modified by the circular dt 16.12.2008. under this new circular the appointment of the family member of the deceased employee is being made on contractual basis subject to renewal every year based upon the performance.

The witness for the claimants during cross examination was confronted with these circulars. But the witness stated that the circulars stand contrary to the circular of DOP&T. when asked if the circular has been objected to by the Unions, he replied affirmatively, but no documents to that effect has been placed on record. There is also no evidence before this Tribunal to believe that the circular issued by the Management and marked as ext MW 1/3 has been challenged by the unions in any proper court of Law.

Admittedly the claimants are working as Malis in the establishment of the management. Their deceased husbands were the regular Malis and had died while in service. The office order of appointment filed by the claimants as WW1/1dt 16.09.2009, the date from which they are claiming regularization clearly shows that they have been appointed on contractual basis on compassionate ground and not as daily rated Mustor Roll employees as claimed by them. The oral evidence adduced by MW 1 shows that the claimants were appointed under the welfare measure taken by the

management on compassionate ground with the sole intention of rendering support to the family of the deceased employee. The said appointment stands independent of the compassionate appointment scheme of DOPT. The management witness has also stated that the mechanism has been developed with a view to give respite and provide livelihood to the families of deceased employees as all the applicants can not be accommodated against the 5% vacancy as directed by DOPT.

On a careful reading of the circulars dt 11/10/2007 & 16/12/2008, it clearly appears that the appointment under the said circulars are independent of the scheme of DOPT. The evidence adduced by Management further reveals that from among the persons appointed on contractual basis the eligible persons are being appointed against the 5% regular vacancies in a phased manner subject to their eligibility. The other document filed by the management as MW 1/1 shows the procedure adopted in this regard. It also reveals that the candidature of the claimant Om wati was considered thrice and rejected being found unsuitable. The documents filed by the management further show that the appointments under the welfare measure scheme were previously made on daily wage basis and now on contractual basis.

The claimants as per their own document have been appointed on contractual basis and not as daily rated Mustor Roll Employees.

The learned AR for the claimants forcefully argued that once the appointment is on compassionate ground the same should be against regular vacancies as directed by DOPT. While agreeing to the said guideline of DOPT, it is worth mentioning that these claimants were never appointed under the compassionate appointment scheme of DOPT, but as per the circular issued by the MCD management as a good gesture to provide support to the family of the deceased employee until their turn comes for regular appointment under the 5% quota of regular vacancy as directed by DOPT. It would be proper to mention that all the applications received in a year can not be considered by the management for compassionate appointment for the 5% restriction imposed by DOPT and the applicants like the claimants can not claim the same as a matter of right.

In this case the evidence adduced by both the parties clearly proves that the claimants have been appointed on contractual basis

by the management subject to renewal on year to year basis and their candidature is open for consideration under the scheme of DOPT. They can not misread their appointment as the appointment on compassionate ground under the scheme of DOPT and demand regularization.

The learned AR for the claimants , during argument drew the attention of the Tribunal to the judgment of the Hon'ble High Court of Delhi passed in the case of Municipal Corporation of Delhi vs Shri Rajesh (WPC No 12996/2009) and submitted that the Hon'ble court in that judgment have upheld the award passed by the Labour court directing the management to grant regular pay scale and all other consequential benefits to claimant appointed on compassionate ground. But the facts of the said case is distinguishable from the facts of the case in hand. In that case the compassionate appointment was made in the year 1983, when the welfare measure circular of the MCD issued in 2007&2008 were not in existence and thus the appointment was treated to be one under the scheme of DOPT. But here the claimants having been appointed under welfare circular of 2008 issued by MCD, their appointment can not be held under the scheme of DOPT and thus no direction can be given to the management to treat them as regular employees and extend all the consequential benefits. This issue is answered against the claimants. Hence ordered.

ORDER

The reference be and the same is answered against the claimants. It is held that they are not entitled to the relief claimed in the claim petition.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
1st May, 2023

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