

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. 102/2003

Date of Passing Award- 03rd July 2023

Between:

The President,
All India CPWD (MRM) Karamchari Union,
Plot No. 1 Udaseen Mandir, Aram Bagh,
Paharganj, New Delhi-110055

Workmen

Versus

The Director (Establishment)
Ministry of External Affairs,
South Blocks, New Delhi-110001

Management

Appearances:-

Shri Armaan Bhola, Ld. A/R for the Claimant.

Shri Vikrant No. Goyal, 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 The Director (Establishment) Ministry of External Affairs, 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-42012/43/2003-(IR(CM-II)) dated 11/07/2003 to this tribunal for adjudication to the following effect.

“Whether the demand of the Bhartiya General Mazdoor Congress (Regd.) for regularization/absorption of the services of 23 workmen working as contract (as per Annexure A-1) in the establishment of Director (Establishment), Ministry of External Affairs, New Delhi is legal and justified? If yes, to what relief these workmen are entitled to and from which date?”

As per the claim statement the claimants 23 in number represented by Bhartiya General Mazdoor Congress as shown in Annexure A-1 of the claim petition were working in the establishment of mgt no. 1 through a private contractor i.e. M/s VBR Maintenance Company. But the mgt no. 1 is the principal employer and they were working under the supervision and control of the said mgt. All of them had completed working for 240 days or more in the preceding calendar year. The contractor is nothing but a name lender, whom the mgt no.1 had introduced to defeat the legal rights of the workmen. The workmen were engaged for work perennial in nature such as sweeping cleaning etc. The mgt no. 1, as the principal employer was not complying with the statutory provisions and not extending the statutory benefits to the workmen for which they were often raising objection. The workmen were also demanding regularization of service for their continuous employment under the mgt no.1. Having failed to redress their grievance, they approached the Regional Labour Commissioner with a complaint and a conciliation proceeding was initiated. But for the adamant nature and non cooperation of the mgt

no.1 the conciliation failed and the matter was referred to this tribunal for adjudication.

The mgt no. 1 i.e. Ministry of External Affairs represented by its secretary was summoned and the said Mgt appeared through its advocate and filed their written statement stating that the claimants were never employed by the mgt no. 1. The said mgt had awarded a contract for housing keeping job of its building at Akbar Bhavan and the name of the contractor was M/s VBR Maintenance Company. The said contracting firm had directly employed these 23 workmen for doing the cleaning job in Akbar Bhavan and was paying the wages to the persons employed including these claimants. The Ministry of External Affairs has to follow the policy and guidelines issued by Govt. of India in these matters from time to time. There is no employer employee relationship between the mgt and the claimant and as such the claim is not maintainable.

The claimants filed replication denying the stand taken by the mgt. It has been stated that the mgt has failed to give para wise reply to the claim statement and thus the facts pleaded in the claim statement amounts to have been admitted by the mgt. Thereby the claimants have pleaded for an award to be passed in favour of the workmen. Be it stated here that the contractor has not been made a party in this proceeding.

As seen from the chronologically maintained order sheets no specific charge has been framed in this case. Hence, the points to be determined in this proceeding are:-

- A. Whether the proceeding is maintainable?
- B. Whether the demand of the workmen for regularization of their service is justified and can be granted.

The individual claimants filed affidavit evidence stating therein that they were working in the premises of the mgt i.e.

Ministry of External Affairs through a contractor. The said contractor has no role to play with regard to their employment. These workmen were discharging their day to day duty under the supervision and control of the mgt and the presence of the contractor was for name shake only. They were discharging the work which was of perennial nature and the nature of work was similar to the regular employees of the mgt. But the mgt was discriminating them in payment of wage and allowances and they were denied of all the statutory benefits. For the objection raised with regard to the exploitation, a demand notice was served and the conciliation proceeding was held. For the failure of the conciliation the appropriate govt. referred the matter. The evidence of the witnesses adduced in this proceeding has not been challenged by the mgt as none of the witnesses were cross examined.

The mgt examined one of its directors as MW1. The witness stated the M/s VBR Maintenance was awarded housekeeping job for their office at Akbar Bhavan and these claimants were appointed by the contractor for the contract valid from 01.05.1998 to 31.12.1998. The contract was further extended for two years w.e.f. 01.04.1999. All the 23 workers were employed by the contractor through whom housekeeping work was outsourced. Hence, The mgt is not the employer of the workmen. There was a principal to principal relationship between the mgt and the contractor and as such the reliefs sought for is not entertainable. During cross examination the witness admitted that no document has been placed to prove the contract entered between the Ministry of External Affairs and the contractor M/s VBR Maintenance Company.

During course of argument the Ld. A/R for the workmen submitted that the Mgt has not pleaded anything denying the employer employee relationship nor any document has been placed on record to prove that a contract was ever awarded to the said contractor. Of course during course of arguments and along with

the notes of arguments the mgt has filed few documents which include the correspondence between the mgt and the contractor, terms and conditions of the contract and the compliance report submitted by the contractor to the mgt. But these documents cannot be read as evidence as neither the documents were proved nor supplied to the workmen for the rebuttal. Thus the evidence of the claimants with regard to their employment in the mgt for housekeeping stands unchallenged and unrebutted. The Ld.. A/R for the claimants during course of argument pointed out that during the pendency of this proceeding the mgt terminated the service of the claimants on the pretext of termination of the contract. But no evidence to that effect has been adduced. In view of the said submission it is now to be examined if the service of the claimants can be regularized or not. In the case of **Hari Nandan Prasad Vs. Food Corporation of India (2014) 7SCC190**, it was observed by the Apex Court as under:-

“Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the Supreme Court an instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying for relief of reinstatement in such cases are obvious. It is trite lat that when the termination is found to be illegal, because of nonpayment of under section 25-F of the

Industrial Dispute Act, even after reinstatement it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.”

Having regard to the judicial trends and facts & circumstances of the present case, this tribunal considers that compensation amount of Rs. 2 Lakh each of the claimants/their legal heirs will be just reasonable. Hence ordered.

Order

Reference be and the same is answered in favour of the claimants. The termination of the workmen by the mgt when the prayer for regularization was pending is held to be illegal. The mgt Ministry of External Affairs is directed to pay compensation of 2 lakh to each of the claimant or their legal heir as the case may be within 2 months from the date when the award would become executable without interest. If the mgt will fail to comply the direction within 2 months the amount shall carry interest at the rate of 9% per annum from the date it is payable and till the final payment is made.

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.
03rd July, 2023

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