

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. 61/2014**

**Date of Passing Award- 03<sup>rd</sup> July 2023**

Between:

Shri Siya Ram S/o Late Jagdeo Chauhan  
Vill. Lala Mohammadpur,  
Post Kankerkhkera, Meerut, (U.P.)

Workman

Versus

1. The Deputy Director General,  
Military Farm (MF-I) QMG's Branch, HQ  
Military of Defence (Army), West Block  
3, R.K Puram, New Delhi
2. The Commandant,  
Military Farm School & Centre,  
Grass Farm Road, Meerut Cantt.  
Merrut (U.P)

Managements

Appearances:-

Shri Vijaypal, Ld. A/R for the Claimant.

Shri Atul Bhardwaj, 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 (i) The Deputy Director General, Military Farm (MF-I) QMG's Branch, HQ (ii) The Commandant, Military Farm School & Centre,, 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-14012/17/2014-(IR(DU)dated 05/08/2014 to this tribunal for adjudication to the following effect.

“Whether the workman has earned right of absorption having been engaged of a considerable period of time regularly even though on daily wage? And whether the management military farm school and center, meerut should give him a permanent regular employee status with immediate effect?”

As per the claim statement the claimant Siya Ram had joined as a casual labour/Gardner in the establishment of Military Farm School and Centre in the year 1984. The DOP&T in the year 1993, issued an order directing conferment of temporary status to the casual workers and as per the said direction the claimant and the persons like him were conferred temporary status with effect from 06.11.1997. After conferment of temporary status the claimant was entitled to regular status and other benefits on the basis of the length of the service rendered and in accordance to the seniority. The name of the claimant was at serial no.2 of the seniority list of the temporary status workers

maintained by the mgt. After being treated as a temporary status employee the mgt was paying him wage at daily rates with reference to the minimum of the pay scale for a corresponding regular Group D employee including DA, HRA and CCA. But suddenly, the mgt on 13.04.1999, terminated his service along with few of other employees. Being aggrieved, the claimant and other terminated employees approached the Central Administrative Tribunal by filing a joint OA. That matter was decided in favour of the workmen by order dated 18.08.2005 and the claimant was reinstated into service with continuity of service. After his reinstatement the mgt, besides taking his service as a Gardner, was also asking him to perform the duties of conservance. When the claimant was performing the duty diligently, suddenly, on 02.06.2012, the mgt terminated his service illegally. At the time of termination no notice of termination was served nor termination compensation etc. were paid. The mgt even did not follow the principle of first come last go. Being aggrieved, of this arbitrary and illegal action of the mgt he served a legal notice on the mgt on 04.03.2013. The mgt gave a reply to the notice on 13.03.2013 stating that the claimant cannot be reengaged for his doubtful integrity. All the efforts of the claimant to resolve the grievance since failed, he made a departmental appeal. That too was rejected by the mgt. The action of the mgt being unfair for denial of regular status and victimization he approached the labour commissioner and the appropriate govt. referred the matter to this Tribunal for adjudication. By filing the claim petition the claimant has made a prayer that an award be passed directing the mgt to reinstate him into service and absorb him as a regular employee w.e.f. 02.06.2012 when his service was illegally terminated along with all consequential benefits.

The mgt filed written statement challenging the maintainability of the proceeding. It has been stated that the Military Farm School is an establishment under the supervision and control of the Ministry of Defense. It is engaged in imparting technologies, guidelines and education cum training in respect of dairy farming. Hence, this being

a training institute for departmental courses meant for the employees of the department, cannot be categorized as an industry. The mgt has denied the claim of the claimant that he was engaged in the mgt in the year 1984. It has been specifically stated that he was engaged in the year 1990 on need basis to carry out seasonal and intermittent nature of work and as such he was not employed against any permanent post of labour. While admitting that the claimant, as per the direction of the DOP&T was conferred temporary status with effect from 12.11.1997, has denied the claim that the claimant was entitled to be regularized on available vacancies. The mgt has specifically stated that the claimant had worked up to 12.04.1999 as the service of all the temporary status labourers were terminated on that day as the Ministry of Defense by letter dated 15.02.1999 directed for reduction of work force and as such the service of all the labourers were terminated with effect from 13.04.1999 in accordance to law and compensation amount of Rs. 12,287 was paid to him. This claimant and others approached the Hon'ble CAT by filing separate OAs describing the termination as illegal. Those OAs were dismissed. But as per the direction of Hon'ble CAT the applicants were given work on job basis to the extent possible with an undertaking to perform any nature of work to be assigned. The claimant again approached the Hon'ble CAT seeking permanent employment. But the applications were dismissed by order dated 04.01.2002 and 13.07.2004 with a direction to the mgt to reengaged the applicants subject to availability of work including the work of conservancy if agreed. Accordingly, as per the office order dated 17.09.2005 the claimant and two others were asked to give their consent to do any work as per availability including the work of conservancy. The claimant gave his consent and was then allowed to discharge the duty. But the claimant failed to discharge the duty as per expectation and on many occasions he was reprimanded to perform the duties perfectly. Instead of improving the quality of work the claimant started using unparliamentarily language against the staff and finally left the job as per his own will. The service of the claimant was never terminated nor he was retrenched entailing payment of compensation or service of notice as per law. The mgt has also stated

that there is no procedure for regularizing the service of the workers conferred with temporary status under the CLTS. Thereby the mgt has stated that the reference is bad in law and the claimant is not entitled to the benefits sought for.

The claimant filed replication denying the averments of the mgt. It has been reiterated that the allegation leveled against claimant about misconduct is false. No show cause notice or domestic enquiry was conducted against him nor any complaint from any other person was ever made against him. He became a victim, only for the reason that he was demanding regularization of service.

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

### Issues

1. Whether the workman Sh. Siya Ram, has earned right of absorption having been engaged of a considerable period of time regular even though on daily wages? If so its effect?
2. And whether the management of Military Farm School and Centre, meerut should give him a permanent regular employee status with immediate effect? If so its effect?

The claimant examined himself as ww1 and filed a number or documents marked in a series of ww1/1 to ww1//17 and the documents ww1/m1 and ww1/m2. Similarly, the mgt examined one witness as mw/1, who proved the documents marked as mw1/1 to mw1/3. Both the witnesses were cross examined at length by the adversary party.

At the outset of the argument, the Ld. A/R for the mgt submitted that the claimant has made a faint attempt of getting a regular job in the mgt, which is opposed to the policy of public employment as has been observed by the Hon'ble Supreme Court in the case of **Secretary State**

**of Karnataka vs. Uma Devi.** While admitting that the claimant was given the temporary status of casual labour, emphatically denied his claim for regularization. He also argued that in case of temporary status casual workers, there is not rule for serving termination notice or paying termination compensation by the mgt. In this case the, claimant's service was never terminated, but he himself had abandoned his employment. The Ld. A/R for the claimant counter argued that under the ID Act temporary status is conferred on a person who works for 240 days or more in a calendar year continuously. In this case, the mgt had admitted that temporary status was conferred on the claimant. The purpose of conferring temporary status on a person is to make him entitled for regularization of service considering the availability of vacancies and inter-se seniority. He also pointed out that the DOP&T in the year 1993 had launched the scheme with an intention of granting temporary status to casual workers and later on, for regularization of service of the said casual workers. Denial of the same amounts to unfair labor practice. Relying on the judgment of the Hon'ble Supreme Court in the case of **Jasmer Singh vs. State of Haryana** and the judgment of the Hon'ble High Court of Delhi in the case of **Delhi Cantonment Board vs. CGIT**, he argued that there is no distinction between a permanent employee and a temporary employee. Termination of service without complying the provisions of section 25F, 25G and 25H of the ID Act is illegal and liable to be set aside. The other contentions raised by the claimant during argument is that, he had never left the job voluntarily. Had it been a fact the mgt would have served a notice recalling him to join duty. In the case of the claimant, as admitted in w.s no recall notice was ever sent.

### **Findings.**

#### **Issue no.1**

The claimant, during his examination, stated that he started working in the Military Farm School as a Gardner in the year 1984. He was discharging the work of a Gardner which was of perennial and regular nature. In the year 1993, DOP&T launched a scheme to confirm temporary status to the causal workers subject to fulfillment

of the conditions mentioned therein. On 06.11.1997 the claimant was conferred temporary status and thereby become entitled to be absorbed against regular post with all other benefits. While conferring temporary status, a seniority list of the casual workers was prepared and the name of the claimant was at serial no.2. To prove the oral evidence, the claimant has filed the documents marked as ww1/1. This is a correspondence made by the officiating commandant of military farm school with the claimant and two others on 06.11.1997, where under the attestation form was forwarded to him to complete and return the same for onward transmission, to regularize their appointment. WW1/2 is a document dated 12.01.1998, under which the specimen signature of the claimant and another was authorized to collect and handover official documents. He has also filed the judgment of the Hon'ble CAT in OA number 2601 of 2003, wherein the mgt was directed to re-engage the applicant subject to availability of work. This order was passed on 29.08.2005. All these documents have been admitted by the mgt. The mgt witness Sh. Mithles Kumar during cross examination also admitted that the claimant was granted temporary status in the year 1997. Being confronted with the document marked as WW1/M2 he admitted that a seniority list of the casual workers was prepared when they were conferred temporary status and the name of the claimant appears at serial no.2 of the said list. Ironically, this witness was never working in military farm school when the claimant was working there. The witness has categorically denied his knowledge about the functioning of the Military Farm School and explained that the Military Farm School has been closed and all the files of the said establishment are now in the custody of 510 Army Base Work, Meerut, and being posted there, is testifying as a witness. This leads to a conclusion that the witness examined by the mgt has no knowledge about the claims of the claimants and whatever he stated, is based on the knowledge acquired from the file.

The witnesses have admitted that the service of the claimant was terminated by the mgt on 13.04.1999 and the same occasioned due to reduction in work by the order of the Govt. He also admitted

that an amount of Rs. 12,287 was paid to the claimant as compensation, but failed to say if the same was equivalent to 15 days salary instead of 30 days salary. He also admitted the documents marked as ww1/3 and ww1/4 and stated that dispute was raised by the claimant before the Hon'ble CAT and the Hon'ble CAT passed an order, pursuant to which the claimant was re-engaged for work on need basis, on furnishing undertaking to discharge any kind of work to be assigned. He further admitted that the service of the claimant was terminated with effect from 02.06.2012. This statement of the witness of the mgt stands contrary to the written statement wherein it has been stated that the claimant had misconducted himself and voluntarily left his service and as such there was no need for serving termination notice or paying termination compensation.

The claimant, during his statement, proved ww1/1 under which he was asked to furnish the attestation form for regularization of his service. Ww1/4 is the correspondence by the mgt, wherein the consent of the claimant was called for to do any kind of work as per availability as per the order of Hon'ble CAT. This letter is dated 17.09.2005. WW1/5 is a letter written by the officiating commandant of MFS and Centre, to the District Magistrate Meerut requesting to verify the character and antecedent of the claimant as he is being considered for regularize/appointed in Group D post in MF School. The witness ww1 has further stated that when steps were being taken for regularizing his service, the mgt in a vindicated action, terminated his service without complying with the provisions of ID Act. He was then constrained to serve a legal notice to the mgt which has been marked as ww1/9. The mgt gave reply to the said notice which has been marked as ww1/11. In it's reply the mgt stated that the claimant failed to discharge his duties for last two months, despite direction being given in this regard. Instead of improving the work, he started using abusive words and finally opted to quit the job out of his free will. Though on repeated occasions he was approached through various officials to join the duty, he failed to report. Hence, his service was never terminated. Moreover, he was fond involved in serious

lapses like cheating, fraud and theft etc. But surprisingly, the witness examined by the mgt stated not to have any direct knowledge about the affairs between the claimant and the mgt. He also admitted that no domestic inquiry was conducted against the claimant nor any complaint was ever received against him. He was also not recalled to join duty. No official, at whose instance the claimant was called to join duty has been examined. Thus, all these evidence taken together lead to a conclusion that the claimant was initially appointed as a casual labour in the year 1990 and was conferred temporary status as a casual labour with effect from 12.11.1997 and had worked up to 12.04.1999, when his service was terminated. At the time of that termination the provisions of the ID act were not complied. However, for the order passed by the Hon'ble CAT New Delhi dated 18.08.2005 in OA number 2601 of 2002 the claimant was reappointed after obtaining undertaking that he will perform the work of conservancy. The documents like ww1/1 and ww1/5 which relate to 08.07.2011 and ww1/6 dated 28.07.2011 shows that steps were being taken for regularizing his service. But suddenly, the mgt terminated his service w.e.f 02.06.2012. On service of a legal notice by the workman the mgt, by reply dated 13.03.2013, intimated that he cannot be re-engaged for his doubtful integrity. The reply of the mgt has been marked as ww1/11. This stand of the mgt has not been substantiated since the mgt witness has admitted about the termination and further explained that compliance of the provisions of section 25F, 25G and 25H is not to required since the claimant was a temporary status labourers.

Now it is to be examined whether the action of the mgt is legal and justified. The Ld. A/R for the claimant has placed reliance in the case of **Jasmer Singh vs. State of Haryana MANU/SC/0026/2015** and the judgment of the Hon'ble High court of Delhi in the matter of **Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Ors. MANU/DE/8297/2006** wherein the Hon'ble Supreme Court and the Hon'ble High Court of Delhi have held that non compliance of termination notice, notice pay and retrenchment compensation

amounts to unfair labour practice and there is no distinction between a daily wager, casual worker, temporary or regular employee as long as the person is employed to do any manual, unskilled, skilled, technical, clerical or supervisory work for hire or reward. Thus, from the evidence on record, and for the principals decided by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi, it is held that the service of the claimant was illegally terminated by the mgt and the mgt has miserably failed to establish that the claimant had voluntarily quit the employment. This issue is accordingly decided in favour of the claimant.

### **Issue no.2**

The admitted states of fact are that the claimant was appointed as a casual worker and subsequently temporary status was conferred on him in the year 1997. It is not disputed that in the year 1999 his service was terminated on the pretext of reduction of work. For the order passed by the Hon'ble CAT in OA no. 2601/2003, he was re-engaged subject to availability of work. The mgt witness was confronted with the documents marked as ww1/4 which is the order of the Hon'ble CAT and ww1/5, ww1/6 and ww1/7, which he admitted to be the documents of the mgt. As per these documents, the mgt after the reinstatement of the claimant pursuant to the order of the Hon'ble CAT had taken steps for regularization of the service. During course of argument the Ld. A/R for the mgt submitted that the Military Farm School has been closed down permanently by the order of the Govt. and as such there is no scope for absorbing or regularizing the service of the claimant when he himself had quit the job. In the proceeding paragraphs, it has been held that the mgt has failed to establish the allegations leveled against the claimant relating to misconduct fraud etc. and also failed to show that the claimant was ever recalled to join his duty. This leads to a conclusion that the service of the claimant was terminated illegally and without following the procedure of law and notice of recall was never served on him.

The Ld A/R for the Mgt strenuously argued that the law and the policy of public employment does not permit regularization of the service of the temporary employees against regular posts. He also submitted that any action in this regard shall put the mgt under heavy financial burden. To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1**. On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization, since the same is opposed to the policy of public employment. But in this case as claimed by the claimant and admitted by the mgt witness the claimant was appointed as a casual worker but subsequently conferred temporary status considering his long and uninterrupted period of employment. Hence, it is to be examined if the principle decided in the case of Uma Devi deprives the claimant of his right for regularization.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers of Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble supreme court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided** in the Civil Appeal No. 6327 of 2014 disposed of on 09<sup>th</sup> July 2014 have held that:-

“The provisions of Industrial Disputes Act and the powers of the Industrial and labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's Case.”

Thus, after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh referred supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to unfair labour practice being engaged for work on temporary basis for a prolong period.

The witness examined on behalf of the mgt has stated that as per the practice in Army, when one unit is closed for some reason, the persons employed therein are relocated and employed in other units. The industrial adjudicator under the Industrial Dispute Acts enjoys wide power for granting relief which would be proper under a given circumstances. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the Awards and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court

came to hold that in settling the dispute between the employer and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper, though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case, where the mgt had admitted the long and continuous employment of the claimant in it's establishment. It is also evident from the documents filed that after a reengagement of the claimant pursuant to the order passed by The Hon'ble CAT, steps were taken for regularization of his service. But suddenly, on some false allegation of misconduct, which has not been proved, he was not allowed to perform duty w.e.f 02.06.2012 which amounts to termination of service. The mgt witness has further admitted that the notice of termination or termination compensation were not paid as he was a temporary worker. This stand of the mgt clearly proves the unfair labour practice meted to the claimant. Hence, it is held that the claimant is entitled to regularization of service and keeping the situation in view, it is felt proper to issue a direction to the mgt to regularize the service of the claimant as per reinstating and posting him in any other unit, which is a matter of practice in Army as stated by the mgt witness. Hence ordered.

### **Order**

The reference be and the same is answered in favour of the workman. It is held that the action of the mgt in terminating the service of the claimant w.e.f. 02.06.2012 without following the provisions of ID Act is illegal unjustified and amounts to unfair labour practice. The mgt is hereby directed to reinstate the claimant into service and regularize him in a Group D Post within three months from the date of publication of the award with continuity of service and all other consequential benefits.

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.  
03<sup>rd</sup> July, 2023

Presiding Officer.  
CGIT-cum-Labour Court.  
03rd July, 2023