

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

**Id. No.20/2011**

Smt. Sunita,  
Resident of 123, Gali No. 3,  
Harijan Basti, Neb Sarai,  
New Delhi.  
( Reference No. L-42012/149/2010-IR(DU) dated 09.03.2011

.....Claimant / workman

**Id. No.21/2011**

Smt. Santosh Devi,  
R/o 123, Gali no. 3, Harijan Basti,  
New Delhi.  
( Reference No. L-42012/150/2010-IR(DU) dated 09.03.2011)

.....Claimant / workman

**Id. No. 22/2011**

Shri Shyam Vir  
Resident of 137, Balmiki Basti,  
Maidan Garhi,  
New Delhi.  
( Reference No. L-42012/151/2010-IR(DU) dated 09.03.2011

.....Claimant / workman

**Id. No. 32/2011**

Shri Niranjana,  
Resident of 136, Gali No. 3, Harijan Basti,  
Neb Sarai, New Delhi.  
( Reference No. L-42012/145/2010-IR(DU) dated 29.03.2011

.....Claimant / workman.

**Versus**

The Vice Chancellor,  
IGNOU No. 3 Harijan Basti,  
Neb Sarai,  
New Delhi

.....Management.

**A W A R D**

Indira Gandhi National Open University (here and after referred to as the university ) respondent herein was established in the year 1985 to provide cost effective and quality education to large section of the people, including those living in remote and far flung areas, through distance education programs. The university functions not only within the boarder of the country but offers educational programs to various other countries. The university has its central campus at Maidan Giri, New Delhi, which is spread over and area of about 150 acres of land. At central campus university has the strength of thousands of officers / officials working there.

The university requires considerable man power to carry out housekeeping services which includes cleaning and sanitation activities. Housekeeping service is outsourced by the university through a private contractor. In the year 2004, the university awarded the contract for housekeeping service to **Sybex computer Systems (Pvt.)Ltd.** The contractor engaged a number of sweeper and cleaners including the claimants herein to carry out its contractual and obligation. On 1<sup>st</sup> Nov. 2007 Univ. Awarded contract for housekeeping services to the new contractor namely **M/s Spic and Span Facilities Management (Pvt.) Ltd.** (in short the new contractor). Initially the new contractor decided to retain services of the sweeper and cleaners engaged by the previous contractor. But negotiation turned futile. Sweeper and cleaner resorted to an agitation and to sat on “Dharna” outside the campus of Maidan Giri of the University. University has filed the civil suit and that

suit was decreed and the sweeper and cleaner were restrained to sit on Dharna outside the campus.

The claimants herein have taken their matter to the conciliation officer by way of filing their respective claim statement. Conciliation officer initiated conciliation proceedings as contemplated by sub section (1) of section 12 of the ID. Act, 1947 (herein after referred as an Act). No settlement had arrived between the parties there. Appropriate Govt. i.e Central Government has referred the reference to this Tribunal vide order dated 09.03.2011 and 29.03.2011 with the following terms: The terms of the reference are almost phrased on the similar lines except the change of the name and particulars of the claimants.

therefore the reference have been read as combinedly in the following words:

*“Whether the action of the management IGNOU in terminating the service of the Niranjana, S/o Late Sh. Prakash Chandra, Sh. Shyam Veer S/o Lakhan Singh, Smt. Sunita W/o Sh. Sahib Singh and Smt Santosh Devi W/o Sh. Suresh Kumar, w.e.f 01.11.2007 is just, fair and legal? If not, to what relief the concerned is entitled to and from which date?”*

After receiving the reference from the Central Government, both workmen and management were asked to appear and files their respective claims and written statements.

All the claimants have averred in their statement of claim that they were appointed at the post of Safai Karamchari with the management since 2004. Their salaries were fixed Rs. 5300/- p.m. Their services were illegally terminated on 03.10.2007. They had served the legal notice of 27.12.2008 to the management but no replies were ever received. They have been performing their duties with utmost sincerity and devotion and gave no chance for any complaint against them till their services were terminated on the full day i.e 03.10.2007. Their further case is that management had got their signature on blank paper, stamped and non stamped and blank vouchers. They have been serving long and requested the management to provide the legal facility. Management got annoyed at this and terminated their services without assigning any reason. It is their further case

that management had brought the contractor for changing their service condition in the year 2007.

The respondent had filed the written statement and taken the same in plea all the cases. He took the preliminary objection that the reference has been framed improper and a claim statement of the said reference deserves to be dismissed. The reference proceeds on a premise that there was an employer - workman relationship between the respondent and the applicants illegally and the respondent terminated the services of the applicants. The applicants were neither the workman in terms of the Act. nor their services were terminated by the management . Applicants were never appointed by the respondent. No salary / wages or any other emoluments were ever paid by the respondent to the applicants. There is no question arises of the appointment of the applicants by the respondent at the post of "Safai Karamchari" at there is no such post exists in IGNOU. Management had further taken plea that he had engaged the services of a contractor M/s Sybex Computer System (Pvt.) Ltd. For outsourcing housekeeping services vide agreement dated 01.11.2004. It was extended up-to 31.10.2007 from time to time. He had given the contract to another agency for out sourcing effecting from 01.11.2007 for cleaning staff. He further taken the objection that no demand notice was ever served to the management by the claimants. He further submits that claim of the claimant be dismissed out rightly as no relationship of employer and employee has been existed.

From the pleading of the parties the following issues have been framed in all the four cases. Issues have been phrased in all the cases on the similar lines and wording therefore the issues framed has been narrated in the following words on 08.05.2013:

1. Whether there does not exist relationship of employer and employee between the parties?
2. As per terms of reference.

In the present case, the workmen had tendered their affidavit in evidence. However, the management has not turned up for cross examination of the workmen/ claimants. Management had filed the affidavit of the witnesses, but it

has not brought the witness for cross-examination. Therefore, virtually there was no witness on behalf of the management has been found on record.

To discharge onus resting upon them, the claimants have examined themselves as WW1 respectively in each of the case. They have reiterated the facts in their affidavit as mentioned in their claim statement mentioning that their services have been illegally terminated by the respondent. They have relied upon the two documents i.e security part Exh. WW1/A (colly) in each of the cases and copy of attendance sheet WW1/A. However, the claimant had mentioned in their affidavit that they had sent the demand notice dated 27.12.2008 but no copy of the demand notice have ever been produced before this Tribunal.

In the case of Shyam veer he had relied one more document i.e the copy of the permission slip i.e Exh. WW1/B while the copy of the attendance sheet was exhibited as WW1/C.

Arguments have been heard on behalf of the claimant by their A/R Sh. Umesh Dubey. As the management has not been appearing since long, therefore this court has not heard the arguments on behalf of the management.

The workmen counsel / A/R has centred his arguments on the premise that the testimonies of the workmen have remained unrebutted and unchallenged therefore the workmen is able to prove their cases that their services have been terminated illegally by the management i.e University. Hence, they are entitled to be reinstated with full back wages.

However, mere non rebuttal of testimony does not make out the case of the workmen proved. Workmen have to prove their case by standing upon his/their own leg. They are required to prove that they are the employees of the respondent. Respondent /management have filed their w.s denying the fact that the workmen are their employee and he in detail mentioned the fact that the respondent University had outsourced the cleaner and the sweeper for their need and they had unfolded the sequence of the events leading to the termination of the workmen when they are engaged another contractor i.e M/s Spic and Span Facilities Management (Pvt.) Ltd. The petitioner had not rebutted the averment

made by the management in their w.s. by filing of the rejoinder. Hence, they had admitted the position that they had been engaged through contractor.

Moreover, the workmen had not produced any bank account in which their salary has been credited and by whom. Even the workmen are not able to show any appointment letter given by the University. Nor they have moved any application for impleading a contractor as a party in this reference, even knowing well the stand taken out by the management. If the appointment letter, termination letter and salary slip have not been produced by the workmen then naturally an adverse inference would be drawn against them, particularly when they have not moved any application u/s 91 of the evidence Act directing the management to produce the same. The relying upon the attendance sheet and the security pass do not enough to make the case of the claimant/ workmen. Security pass has been issued by the principle employer only for giving access to its premises. The wages sheet/ attendance sheet have to be verified by the principle employer. These evidences are not sufficient to prove that the claimants are the employee of the university. Hence, this issue in all the cases goes against the workmen and in favour of the management.

In view of the above finding the issue no.1, no relief can be given to the workmen / claimant. Claim of the claimants stand rejected.

Award is passed accordingly.

A copy of this award is placed in each of the file.

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

Dictated & Corrected by me.

Dated 6<sup>th</sup> October,2023.

(Atul Kumar Garg)  
Presiding Officer.  
CGIT-cum-Labour Court-II  
New Delhi.