

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. 84/2015

Date of Passing Award- 08.08.2022

Between:

Shri Pawan,
S/o Shri Ramphal,
At- Village & Post Kachida,
Varshabad, Gautam Budh Nagar,
Meerut (U.P)-250005.

Workman

Versus

1. The Chief,
NDDTC, AIIMS,
Kamla Nehru Nagar,
Near Central Public School,
Ghaziabad, U.P.
2. M/s Super Aircon,
At- C-129, Pandav Nagar,
Behind Radha Krishna Temple,
New Delhi-110092.
3. K.S.L Enterprises,
Office At:- A-1/353,
Janakpuri, New Delhi.

Managements

Appearances:-

Shri Arvind Kumar
(A/R)

For the claimant

Shri Vikrant Narayan
(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 NDDTC, AIIMS, 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-42012/119/2014 (IR(DU) dated 15/09/2014 to this tribunal for adjudication to the following effect.

“Whether the action of the management of NDDTC, AIIMS Ghaziabad, its contractor- M/s Super Aircon in terminating the services of workman Shri Pawan Kumar S/o Shri Rampal w.e.f 21.12.2012 is legal and justified? If not, what relief the workman is entitled to?”

As per the claim statement the claimant was working in the premises of NDDTC, AIIMS Ghaziabad through the contractor M/s KSL Enterprises and his service was illegally terminated w.e.f 07.12.2012 and his wage for

the months from May 2012 till the date of termination was not paid. During course of employment though he had worked continuously for a period of 240 days in a calendar year preceding to his termination and the nature of work discharged was perennial, the management No.1 never conferred temporary status on him. During course of employment the management No.1 neither gave him letter of appointment nor extended the benefits of EPF and ESI Act. The demand raise by the claimant for his legitimate dues perhaps irritated the management leading to his termination. Being aggrieved he has raised a dispute before the labour commissioner where steps for conciliation were taken. Since, the conciliation failed the appropriate government referred the matter to this tribunal. The claimant in the claim petition has thus prayed for an award to be passed directing the management No.1 to reinstate the claimant into service with back wages and to pay the arrear wage from May 2012 till the date of reinstatement.

Being noticed the management No.1 i.e. AIIMS appeared and filed WS denying the employer and employee relationship with the claimant. It has been stated that the management AIIMS is not an industry and the claimant was never employed by them. The management of AIIMS enters into the contract with different contractors for execution of the work of Gardner/ Assistant Technician etc. the contractor is paid the amount as per the contract. The engagement of the persons through the contractors terminates with the termination of the contract. At no point of time the service of the claimant was terminated by the management No.1 nor any unfair labour practice was meted to him. It has also been stated that the claimant has not stated specifically about the dates when he was inducted into the service of the management No.1 and when his service was terminated. Thus, the management has pleaded for dismissal of the claim as not maintainable. The claimant filed rejoinder reiterating stand taken.

On the rival pleading the following issues were framed for adjudication.

ISSUES

1. Whether the action of the management NDDTC, AIIMS Ghaziabad and its contractor M/s Super Aircon is terminating the service of workman Shri Pawan Kumar w.e.f 21.12.2012 is legal and justified.
2. If Not, what relief the workman is entitled?

The claimant testified himself as WW1 and relied upon the one document marked as WW1/1 which is the complaint filed before the Labour Commissioner. On behalf of the management one Sanjay Kumar Jain the Assistant Engineer Civil was examined as MW1. Both the witnesses were examined at length.

FINDING

The reference has been received for adjudication to the effect if the termination of service of one Rampal is legal and justified. But the claim has been filed one mukesh s/o Rampal. The management AIIMS and two

contractors have been made parties. Those two contractors did not appear and proceeded ex parte. During the pendency the claimant filed an application u/s 11(3) of the Act for a direction to the management for production of document. That application was allowed and the management was directed to file attested copies of the documents prayed for giving liberty to the claimant to adduce secondary evidence. As seen from the record neither the management produced the documents nor the claimant adduced secondary evidence. The claimant tendered his affidavit as WW1 and the management examined one witness as MW1. The claimant who testified as WW1 has stated that during the course of employment the salary slip was not provided and the benefits of the EPF and ESI were not extended to him. No attendance register for the work done by him was maintained nor I card was issued to him. During cross examination the witness has stated that he is working against a permanent post and the duty was being assigned by the J.E. He has made it clear that his employment was directly under the management No.1 and not under the contractor management no.2 and 3. During cross examination though he has stated that his employment was from 1st January 2009 to December 2012 as Gardner and he was working from 08.00A.M to 05.00 PM everyday till his termination in December 2012 no document or prove has been placed on record to prove the same. No other oral or documentary evidence to prove that the claimant was working in the premises of the management No.1 under its supervision and control has been filed. The claimant has thus, miserably failed to discharge the burden in showing his employment under the management No.1 and completion of 240 days in a calendar year which could have conferred temporary status on him making it obligatory on the part of the employer to comply with the provisions of section 25F of the Id Act. The management No.1 has taken a plea that the claimant was never employed by the management No.1. He might have been engaged through the contractor. The management has taken a stand that the award cannot be passed against the management. During cross examination of the management witness though several questions were put and a letter issued by the management No.1 and marked as WW1/1 was confronted, the same no way proves that the claimant was ever employed by the management and his service was illegally terminated by the management No.1. There is absolutely no evidence on record to show that there exist employer and employee relationship between the claimant and management No.1 and the service was illegally terminated. For want of proof the claim advanced by the claimant is liable to be rejected. Hence, ordered.

ORDER

The claim be and the same is dismissed and the reference is accordingly answered. 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.
08th August, 2022

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CGIT-cum-Labour Court.
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