

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. 105/2011

Date of Passing Award- 09.11.2022

Between:

Shri Banwari Lal,
S/o Shri Khyali Ram,
C/o Village & Post Office:-
Khan Alampur, Aligarh U.P.

Workman

Versus

The General Manager,
NCPS, NTPC Ltd.,
Mechanical Maintenance Department,
Vidyut Nagar, Dadri,
Gautam Buddh Nagar (U.P)

Management

Appearances:-

Shri B K Prasad
(A/R)

For the claimant

Shri Rajesh Mahindru
(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 NCPS, NTPC Ltd., 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-42011/80/2010 (IR(DU)) dated 12/10/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the Management of NTPC, Dadri, in terminating the services of workman Shri Banwari Lal, w.e.f 18/04/1994 is illegal and unjustified. If so to what relief he is entitled to?”

As per the claim statement the claimant was working as the permanent employee with the management in the post of helper since 10.09.1991. With an unblemished track record and no scope was ever given by him for raising any complaint by the employer. On 18.04.1994 when he reported for a duty the management did not allow him to perform the duty and no reason was assigned for such refusal. When he demanded a written order of termination of service the same was not given. On 29.04.1994 the claimant gave a written request to the management to allow him to perform duty. Neither he was allowed to perform duty nor any reply to his letter was given. The claimant for sometime visited the office of the management with request to allow him to perform the duty but his request was never accepted. He has further stated in the claim petition that the management illegally and unjustifiably terminated his service. Before the termination no domestic inquiry was conducted. No termination notice or notice pay was paid to him. From 10.09.1991 to 17.04.1994 he had worked continuously for the management NTPC and in the preceding year of termination of his service had worked for 240 days or more. Thereby the claimant challenged the termination as illegal. Since, the management did not pay any heed to his request for reinstatement he raised a dispute before labour commissioner Ghaziabad and on failure of conciliation the appropriate government referred the matter to this tribunal for adjudication on the legality and justification of the termination of his service.

Being noticed the management NTPC appeared and filed written statement challenging the stand of the claimant. At the outset it has been pleaded that the claim is barred by limitation for being raised 18 years after the alleged termination. It has also been stated that NTPC is a government of India Enterprise and never engages contract workers directly. For execution of certain work the contract are awarded to the contractors who engage their own men to execute the contract and make payment to them in accordance to the Contract Labour Regulation and Abolition Act 1970. So far as this claimant is concerned he was engaged by one of the contractor M/s Bachhil Sons and his service was terminated by the said contractor. The claimant Banwari Lal had raised a dispute before the Assistant Labour Commissioner Ghaziabad which was registered as CP No. 467/1994. In that dispute the claimant had added M/s NTPC Dadri and M/s Bachhil and Sons as opposite party. Having

realized the mistake he withdrew the matter and filed another application which was registered as CP No. 814 of 1994. In the subsequent application the claimant cleverly deleted the name of the contractor. The Assistant Labour Commissioner Ghaziabad took up the matter for conciliation and since the attempt failed the matter was referred to the Labour Court No. 1 Ghaziabad where it was registered as ADJ Case no. 133 of 1996. The management NTPC filed written statement challenging the jurisdiction of that court. Ultimately the labour court disposed of the matter for want of jurisdiction and appropriate government again referred the matter to this tribunal in a mechanical manner for adjudication on the justification of the alleged termination.

The management NTPC has further stated that there is no employer and employee relationship between the claimant and NTPC and the claimant was never appointed nor terminated by NTPC. He was infact the employee of the contractor M/s Bachhil and Sons and the claimant has made some false allegation that he was working for the management and the later refused to take him on duty since 18.04.1994. The management has denied the stand of the claimant that he asked for a written order of termination and had sent a written request to take him back to service. The strong stand of the management is that it being a Government of India Enterprise has its own procedure of recruitment and never engages temporary or contractual employees. The eligible contractor is given the contract to execute a specific work and the persons engaged by the said contractor are not the employees of the NTPC and for that reason the claim petition is false and not maintainable. The claimant filed replication denying the stand taken by the management.

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

ISSUES

1. Whether delay of 18 years in making reference order frustrates claim of Shri Banwari Lal?
2. Whether there existed any relationship of employer and employee between the parties.
3. As in terms of reference.

The claimant examined himself as WW1 and proved the number of documents which have been marked in a series of WW1/1 to WW1/75.

These documents include the claim filed before the labour commissioner a number of gate passes issued by NTPC for entry of the claimant to the premises of the management material issue slips reflecting the name of the claimant Banwari Lal the circular with regard to the pay revision of the employees of NTPC the document marked as WW1/17 to WW1/23 which are vouchers with regard to repair and maintenance of the machineries in which at some places the name of the claimant is reflected the order passed by the Labour Court Ghaziabad a number of photocopies of the attendance register of NTPC in which the name of the claimant appears.

Similarly the management examined one Anil Kumar Chawla, DGM HR NTPC as MW1 one Umesh Kumar DGM HR as MW2 and one Kalyan Singh Bachhil as MW3 who was summoned as a witness by the tribunal. The management has filed the registration certificate of the management for engagement of contractors as MW2/2 a letter written by the contractor Bachhil and sons describing the claimant as its employee which has been marked as MW1/1 in addition to the same the management has also filed the photocopies of the contract awarded to the M/s Bachhil and sons and the annual contract labour report submitted by NTPC to the registering and licensing officer in which the name of the claimant doesn't find place. The management has also filed a list of the contractors engaged at different point of time.

At the outset of the argument the Ld. A/R for the management submitted that in view of the denial of employer and employee relationship by the management, heavy burden lies on the claimant to prove the employer and employee relationship. Not only that the burden also lies on him to prove that he had worked for 240 days in the preceding calendar year of alleged termination making it obligatory for the employer to comply with the provisions of section 25F of the Id Act. He further submitted that in this case the claimant has miserably failed to discharge any of the burdens. Moreover NTPC is a government of India Enterprise and never engages contractual or temporary workers. It has been registered under the Contract Labour (R & A) Act and for execution of certain work it engages contractors and files annual return of the contractual workers or contractors engaged. The said contractor in order to execute the work awarded engages his own men and receives payment

from NTPC by raising bills. The persons so engaged though work in the premises of NTPC are no way related to NTPC as its employees. The claim as advanced by the claimant if would be allowed, the same shall amount to a back door entry and shall stand opposed to the policy of public employment. The Ld. A/R for the management thus argued for dismissal of the claim.

On behalf of the claimant emphasis has been given on the documents filed and exhibited as WW1/1 to WW1/77. These documents are all photocopies of the vouchers material receipt order, gate passes and attendance register. The Ld. A/R for the claimant submitted that the claimant is a poor worker fighting the litigation against the mighty employer. All the original documents are in possession of the management and the application filed by the claimant seeking indulgence of the Tribunal for production of the documents could not yield in result as the management denied the possession of the same. Mr. B K Prasad the Ld. A/R for the claimant argued that all these documents were created during an undisputed point of time and bear the letter head of NTPC. Hence those documents cannot be viewed with suspicion. Citing the judgments of the Hon'ble Supreme Court in the case of **Hussain Bhai vs. The Alath Factory Tezhilali union and others AIR 1978 SC 1410** and in the case of **International Airport Authority of India vs. International Air Cargo Workers Union and another 2009(13) SCC 374** he submitted that the presence of intermediate contractors with whom the workers had immediate or direct relationship is of no consequence when, on lifting the veil or looking at the conspectus of factors governing the employment the tribunal finds that the real employer is the management and not the intermediate contractor. He thus, argued that the tribunal has to carefully examine the documentary evidence on record and dislodge the stand taken by the management.

On the other hand the Ld. A/R for the management while placing reliance in the case of **workmen of Nilgiri Cooperative Marketing Society Limited vs. State of Tamilnadu AIR 2004 SC 1639** submitted that in the said judgment it has been held that the person who sets up a plea of existence of relationship of employer and employee the burden would be on him to prove the same. He also argued citing the judgment of **Ashok Kumar vs. State Decided by the Hon'ble Supreme Court in**

WPC No. 9438-42 of 2004 that when no reference is made to the Labour Court for determining whether the contract was sham or camouflage, the Labour Court cannot enter into this issue. His argument that mere filing of affidavit or self serving statement by the claimant will not suffice in the matter of discharging the burden has been supported by the judgment of Hon'ble Supreme Court in the case of **Krishna Bhagya Jala Nigam Limited vs. Moh. Rafi (2009)-II SCC 522.**

FINDINGS

ISSUE NO.1

Admittedly this dispute has been raised 18 years after the alleged termination of service of the claimant. The Ld. A/R for the management while drawing attention to the provisions of section 2A of the ID Act submitted that any application challenging the dismissal invoking the provision of section 2A(2) is required to be filed before expiry of 3 years from the date of such discharge dismissal or retrenchment. Though, no time limit has been prescribed for raising a dispute u/s 2A(1), the same should have been raised within a reasonable time period. In this case the dispute before this tribunal came up after 18 years and as such it is hopelessly barred by time and on that ground alone need to be dismissed. In reply the Ld. A/R for the claimant submitted that when the statute does not prescribe any limitation it will be prejudicial to the claimant to interpret the matter in a manner not provided under the statute.

Admittedly the claimant soon after his alleged termination had raised the dispute before the Labour Commissioner where conciliation was held. On failure of conciliation the matter was referred to the Labour Court Ghaziabad. The management since raised dispute with regard to the jurisdiction of that court, an order was passed dismissing the prayer for want of jurisdiction and thereafter the appropriate government referred the matter to this tribunal. Thus, an unreasonable delay occurred before the matter came to be listed here. For the circumstances it cannot be held that the delay in bringing the litigation for adjudication is attributable to the claimant and the claim is liable to be dismissed. The objection raised by the management with regard to the limitation is not accepted and this issue is accordingly answered in favour of the claimant and against the management.

ISSUE No.2.

This is the most important issue for adjudication in this proceeding. In order to decide whether the service of the claimant was terminated illegally by the management, it is to be decided at the first instance if the claimant was working as a helper in the management from 10.09.1991 to 18.04.1994 and there exists any employer and employee relationship between them. The claimant has pleaded and laid evidence that he was working as a helper in the premises of the management and attending the works assigned to him. To support the same he has filed photocopies of the several gate passes issued by NTPC for his entry into the premises of the management and material issue slips reflecting his name, photocopies of the attendance register etc. the management took a stand that the claimant had never worked in the premises of the management but was serving as a person employed by the contractor to whom the contract was awarded. The management has examined MW3 the contractor through whom the claimant was employed. Not only that the management has also produced the copies of the contracts executed between it and different contractors and the return filed under the Contract Labour Act. Thus, from the evidence on facts, it is to be ascertained if at all the claimant was working as a helper for the management. The claimant as WW1 has fully supported the averments of the claim statement and added that during this period he had worked for 240 days in a calendar year. The Ld. A/R for the management raised dispute on the admissibility of the documents filed by the claimant to prove the employer and employee relationship between the parties. He also pointed out to the evidence of the claimant recorded during cross examination wherein the claimant has admitted that he was not enrolled in the Employment Exchange. He has also admitted that no employee no. was issued by the management to him as in the case of the permanent employees of NTPC. He has also admitted that no pay slip or permanent identity card containing permanent employee No. was ever issued to him. The Ld. A/R for the management pointed out that in the cross examination the claimant has admitted in clear terms that he was working with contractor Bachhil and sons and does not have any proof to show that any salary was ever paid to him by NTPC. The Ld. A/R for the management while pointing to the evidence of the management witnesses submitted that an application was filed by the claimant for a direction to the management for production of original

documents in possession of the management which could have thrown light on the issue. But the management denied to have possession of the documents leading to filing of secondary evidence. He also argued that the documents like attendance register, gate pass etc were created during an undisputed point of time and as such those cannot be brushed aside.

In this case the attendance register filed by the claimant shows that against some of the employees the employee code Nos. have been mentioned but as against the name of the claimant which finds place at the bottom of the page there is no mention of the employee no. Taking advantage of the same the Ld. A/R for the management argued that the attendance register has been manipulated and the photocopies have been taken to mislead this tribunal.

The law is well settled that the burden of proving employer and employee relationship always rests on the person who asserts the same. In the case of **Ram Singh and others vs. Union territory of Chandigarh and others reported in (2004)1SCC page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc. The factual matrix of the present dispute as evident from the oral and documentary evidence is that no advertisement was issued for the appointment of the claimant nor any appointment letter was issued. Similarly there is no document available on record to presume that the management was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the management and he was signing the attendance register in acknowledgment of his daily attendance of duty. The attendance register filed by the claimant lacks credibility since though a photocopy the same do not contain any impression of the seal of the management or signature of any of its employees. It appears to be a self serving document wherein only the name of the claimant finds place without the employee no. or other details. The documents like gate pass, only proves the entry of the claimant to the premises of NTPC but not his status as an employee of the later. The mutual obligation in the nature of deducting PF subscription

and extension of other benefits is no way evident from documents filed by the parties. Production of the photocopies of the gate pass, only proves that he was carrying out some work assigned to him in the premises of the management for which as stated by the management witness that the contracts were being awarded to the contractors who was engaging his own men to execute the work. This finds support from the statement of the claimant elicited during cross examination that no appointment letter, salary slip was ever issued and he was engaged through the contractor. On behalf of the management the contractor has been examined as MW3 and a letter written by him to the management acknowledging the claimant as a person employed by him has been filed as MW1/1. Thus, from the totality of the evidence it is held that the claimant has failed to discharge the burden of proving the employer and employee relationship which is accepted in view of the stand taken by the management that the later being a Government of India enterprise never engages contractual workers. This issue is accordingly decided against the claimant.

ISSUE No.3

The grievance of the claimant is that he had worked for the management for 3 years but the management without following the procedure laid down under law illegally terminated his service. The law is again well settled that when the workman successfully establishes his relationship as an employee of the management, it is to be seen if the termination was made illegally. Reference can be made to section 25F of the ID Act which precisely speaks that no workman employed in any industry who has been in continues service for not less than one year shall be retrenched unless and until the said workman has been given one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken stand that no one month notice, notice pay, or compensation was required to be paid since, there was no employer and employee relationship. The claimant has alleged non compliance of the mandatory provision of section 25F of the Id Act and the management has admitted non compliance of the same. But for the decision arrived while deciding issue No.1 and considering the fact that there exists no employer and employee relationship between the parties it cannot be held that the service of the claimant was illegally terminated by the management and at the time of termination the

provisions of section 25F were not complied. This issue is also decided against the claimant.

In view of the findings arrived in respect of issue No.2 and 3 holding that the claimant was not an employee of the management and his service was not illegally terminated it is held that the claimant is not entitled to the relief sought for. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest. 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.
09th November, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
09th November, 2022.