

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. 127/2020

Date of Passing Award- 10th Feb.,2023

Between:

Sh. Manoj, s/o Sh Birpal,
Hindustan Engineering & General Mazdoor Union,
Branch Office, A-193,
Karampura, New Delhi, 110015

Claimant.

Versus

1-State Bank of India Card & Payment Services Pvt. Ltd.,
Plot No 6, Subash Nagar, New Delhi-110027

2-Caliber Human Capital Services, Pvt Ltd, Plot No.
126, Lower Ground Floor, sec 44, Gurugaon- Haryana-
122003.

Managements.

Appearances:-

Sh Kailash Kumar, AR for the Workman.

None 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 State Bank of India Card & Payment Services Pvt. Ltd and Caliber Human Capital Services Pvt.

Ltd, and the 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-12011/11/2020–IR(B-I) dated 16.06.2020 to this tribunal for adjudication to the following effect.

“Whether the claim of Hindustan Engineering and General Mazdoor Union that the service of Shri Manoj S/O Sh Bir Pal has been terminated by the management of SBI Cards payment services Private Ltd. and M/S Caliber Human Services Pvt. Ltd. is correct? If so, what relief the workman is entitled to?”

Being noticed, the claimant appeared and filed the claim statement. As stated in the claim petition, he was appointed as a Sales Executive of Management No. 1 through Management No 2 on 30/07/2015, on a monthly salary of Rs 16,858/- and working with the Management No. 1 continuously till the date of Termination of his service. He was the employee of Management No. 1 and the introduction of Management No. 2 as the contractor was illegal and designed to deprive the claimant of his lawful rights. Neither the Management no. 1 is registered under the Contract Labour Abolition & Abolition Act nor the Management No. 2 is having license to engage contract Labour. The claimant was working against a permanent post and discharging perennial nature of work. But the managements on 31/07/2018, suddenly terminated the service of the claimant in gross violation of the provisions of the ID Act. The letter of termination dated 26/07/2018, sent through speed post was received by the claimant on 31/08/2018. At the time of such termination no notice, notice pay or termination compensation was paid. In the said letter of termination a false claim about an outstanding amount of Rs 3,11,225/-, payable by the claimant was raised with the sole intention of deterring the claimant from taking any legal action against the illegal termination. The management, on the contrary, did not release the duty pay of the claimant for the period July 2018. It has also been stated that the claimant was never entrusted with the work of handling cash or maintain account of the Managements. His job was limited to filling up the forms of the customers and collection of documents which were being verified by his seniors for further action. The claimant had raised a dispute before the

conciliation officer cum labour commissioner. No fruitful result could be achieved during conciliation for the non co operation of the managements. The claimant there after , sent a demand notice to the managements for payment of his earned wage, leave salary, Bonus etc., but the Managements did not respond to the same. For the failure in conciliation, the appropriate Govt. referred the matter to this Tribunal for adjudication, in terms of the reference. Though noticed the managements did not appear and by order dated 29th March 2022, both the managements were proceeded ex parte. The claimant testified as WW1 and filed some documents which have been marked as WW1/1 to WW1/6. These documents are the demand notice sent by the claimant, the claim filed before the ALC cum conciliation officer, the reply filed by the management, the rejoinder filed by the claimant and the termination letter issued by the management. The oral and documentary evidence filed by the management stands un-rebutted and un-controverted. In his affidavit the claimant has stated that he was employed directly by the Management no. 1 i.e SBI Card payment Pvt. Ltd. and the management no. 2 has been shown as an intermediary agency and contractor for supply of man power for name sake only as neither mgt no one is registered nor the mgt. no. 2 is having License to engage contract labour. The allegation relating to mis-management of cash is a false allegation and never proved. The reply filed by the Management no1 before the conciliation officer and marked as WW1/3 shows that the service of the claimant was terminated on some allegation of mismanagement of account. It is not known what is the conclusion arrived on that investigation by police. It is also not evident if any investigation was ever held on the said allegation. The document filed by the claimant as WW1/5 is the termination letter of the claimant issued by M-2. The said letter has no reference about compliance of the provisions of sec 25F and 25G of the ID Act which is mandatorily to be complied by the employer before termination of service of the employee. Thus , the oral and documentary evidence placed on record leads to a conclusion that the service of the claimant was illegally terminated by the employer i.e Management No 2. Except the oral evidence of the claimant , there is absolutely no material on record to held that the claimant was working under the supervision and control of Management No 1. On the contrary, the document placed on record as WW1/1 is the representation made by the claimant to the

Management no. 2 i.e the agency requesting to withdraw the order of termination. Thus it is concluded that the claimant is entitled to the relief for the illegal termination from the Management No 2 only. Now it is to be seen , what relief the claimant is entitled too. In his statement, he has stated that since the date of termination he is unemployed. No evidence contrary to the same is available. From the termination letter it is evident that the service was terminated on some allegation of tampering of documents, leading to financial loss to the management. Thus, it is a case of loss of confidence where, the circumstance do not justify an order of reinstatement. For non compliance of the provisions of sec 25F of the ID Act, the Management no. 2 shall pay one month pay and 15 days pay for each completed year of service considering the last pay of the claimant i.e Rs 16,858/- as described by him. In addition to that the claimant shall be paid Rs 50,000/- as litigation expenses by the employer Management No 2, for unnecessarily pushing the claimant to a litigation. Hence ordered.

ORDER

The claim be and the same is allowed. The Management No 2 is directed to pay one month last drawn pay to the claimant along with equivalent of 15 days pay per month for each completed year of service in terms of the provisions of sec 25F of the ID Act. In addition to the same the respondent No 2 shall also pay Rs. 50000/- to the claimant towards litigation expenses. The said management shall pay the amount as directed within two months from the date of publication of the order, failing which the amount shall carry interest @9% per annum from the date of this order 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.
10th February, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
10th February, 2023.