

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. 57/2015**  
**Date of Passing Award- 10<sup>th</sup> April,2023.**

Between:

The General Secretary,  
CWC Mazdoor Union,  
B-1/200, Gali No.1 Rajiv Nagar Colony,  
Charoli Ext East Delhi-110096

Claimant

Versus

1. The Managing Director,  
Central Warehousing Corporation,  
Inland Container Depot Near Gazipur Village,  
Patparganj Delhi- 110096
2. Suman Forwarding Agency Pvt. Ltd.  
ICD, Near Gazipur Village,  
Patparganj, Delhi-110096

Managements

Appearances:-

None for the Claimant.

Sh. Ashok Kumar, 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 Managing Director, Central Warehousing Corporation, (ii) The Regional Manager, Central warehousing Corporation, (iii) The Manager, Aqdas maritime Agency Pvt. Ltd. (iv) The Manager, Suman Forwarding Agency Pvt. 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-42011/5/2014(IR(M)) dated 30/10/2014 to this tribunal for adjudication to the following effect’;

“Whether the engagement of contractors in the establishment of Central Warehousing Corporation for the work of loading/unloading & stuffing/De-stuffing can be considered as Sham and Camouflage? If yes, whether non-regularization of workmen in the establishment of Central Warehousing Corporation is just, fair and legal? If not, what relief the workmen concerned (202 workmen) are entitled to?”

As per the claim statement, the Management CWC is a statutory corporation established under the statutory corporation Act 1962. It maintains warehouses to store and facilitate transportation of agricultural products, seeds, manures, fertilizers, agricultural implements and other notified commodities offered by individuals and organizations. In order to fulfill the obligation and carry out its business, it has constructed 15 godowns and 1 yard at Patparganj, in each godown, there are approximately 20 labourers and one packer engaged. The packer also performs the duty of the Godown in charge and opens the cargo box for inspection of the custom authorities and again repacks the same. He performs the duty with the risk of coming in contact with dangerous gas and substance some times as no safety measure is provided by the CWC. The labourers engaged also perform the work which is highly risky without any safety measure. The loading and unloading work of CWC is basically done by the labourers. The nature of the work done by the packers and labourers as loaders and unloaders is of perennial nature as the same is the primary function of CWC.

But the management CWC engages the loaders and the packers through some private agencies/ contractors, who are no other than the name lenders. In fact the workmen discharge the functions directly under the supervision and control of CWC and its officials and introduction of the contractor is only meant to deprive the workmen of their right for regularization

in the service of CWC. All these workers are paid their wages by CWC which by its officials keeps control and supervision over the work of the workmen. Though the contractors are changed on intervals, the workmen are never changed nor any break in their service is effected. Thus they are continuously and uninterruptedly working for the management and each of the workers have completed work for 240 days or more in a calendar year in the establishment of the management. Neither the management CWC is registered under CLRA nor the contractors engaged are having license to engage contract labours. Several representations were made to the management of CWC claiming regularization of service of the workers working for a long time as some of the workers are working since the year 1985. But no result could be achieved. Hence the workmen through their union approached the Hon'ble High Court of Delhi by filing CWP No 48/2000. The Hon'ble court disposed of the CWP by order dt 17/10/2000 observing that the matter be referred to the Central Advisory Contract Labour Board. Accordingly the board heard the matter from both the parties and observed that the workmen are getting much less remunerating in comparison to the regular employees discharging similar nature of work at the other centres of CWC across India. The Govt. as per the observation of the Board issued Notification dt 17/11/2006, abolished engagement of contract labour in the handling and loading unloading of import and export containers. The management CWC challenged the notification by filing WP No 4114/2008 and operation of the notification was stayed. But the claim of the claimants are that they are employed directly by the management of CWC and the contractors are shown as engaged to deprive the workmen of their right for regularization. Having failed in their effort for redressal of the grievance, the claimants through the union raised an Industrial Dispute before the conciliation officer. The attempt for conciliation failed for the non co operation of the management and the appropriate Govt. referred the matter for adjudication in terms of the reference.

Being noticed the management CWC appeared and filed WS refuting the stand of the claimants taken in the claim petition. Besides challenging the maintainability for want of espousal, it has been stated that the CWC is operating the

inland clearance Depot at Patparganj under the license issued by the Custom Authorities. The center has to close down on withdrawal of the License as has been done in other centres of CWC. Hence there is no possibility of employing any person permanently or on regular basis at Patparganj Depot. Moreover for introduction of mechanized transporting, handling, packing etc, the man power requirement has diminished considerably. The business of CWC has also decreased considerably in the current time. The notification prohibiting engagement of contract Labour has been stayed by the Hon'ble High Court. Moreover, the workmen have never worked under the supervision and control of CWC. They are the persons engaged by the contractor awarded with the contract for a specific work and for specific time. Hence the claim of regularization as advanced by the workmen is baseless and liable to be rejected.

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

### **ISSUES**

- 1- Whether the engagement of contractors in CWC for work of loading and unloading & stuffing can be considered as sham and camouflage? If so effect.
- 2- Whether the non regularization of the workmen in the establishment of CWC is legal, just and fair?
- 3- Whether the management has challenged the reference order? If not effect.
- 4- Whether the dispute raised by the workmen through the Union has been properly espoused? If not effect.
- 5- To what relief the workmen are entitled to and from which date?

The claimants thereafter were called upon to adduce evidence in support of their claim. Several opportunities were allowed for the purpose and for non appearance of the claimants fresh notices were also issued. Despite that when the claimants did not turn up, the opportunity for adducing evidence was closed. Thereafter the management was called upon to adduce evidence. But there being no evidence adduced by the claimants to discharge the burden of proof, the management expressed that no evidence by the management

shall be adduced. Hence evidence was closed, argument was heard being advanced by the management.

During argument the learned AR for the management submitted that the burden of proof being on the claimant, they opted not to adduce evidence. Whereas the stand taken in the claim petition has not been substantiated the stand taken by the management stands un rebutted. Hence the claim be decided against the claimants.

On hearing the argument advanced by the management it is held that the claim advanced by the claimants has not been established. Hence a no dispute award is to be passed. Hence ordered.

#### ORDER

The reference be, and the same is answered against the claimants. The claim having not been established, this no dispute award is passed.

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.  
10<sup>th</sup> April, 2023

Presiding Officer.  
CGIT-cum-Labour Court.  
10<sup>th</sup>April, 2023