

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-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 159/2021

Date of Passing Award- 13th March,2023

Between:

Shri. Om Prakash Joshi, S/o Sh. Pan Dev Joshi,
R/o M-1-625-A, Gali No-11, Asthal Mandir Road,
Sangam Vihar, New Delhi-110080

Through- Indian National Mirgrant Worker's Union
1770/8, 3rd Floor Govind Puri Extn. Main Road, Kalkaji
New Delhi- 110019.

Workman

Versus

1. Airport Authority of India,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi-110003.
2. Shakti Anand Security Agency,
S-II, 2nd Floor, Chamber-04, Plot No. 07
LSC Sector-12, Dwarka, New Delhi-110075.
3. 4926, Sandeep Mittal Security Agency,
01,281/1, Main Palam Vihar Road, Brijwasan,
New Delhi-11006.

Managements.

Appearances:-

Sh. Rakesh Sharma, Ld. A/R for the Claimant.

None for the management

A W A R D

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As per the claim statement on 02.07.2014 the claimant Om Prakash Joshi, was recruited as a Security Guard by Air Port Authority of India and posted at Safdarjung Airport New Delhi. His last drawn salary was 24,152/- per month. In order to deprive the claimant of his lawful rights the management no.1 showed him as an employee of contractor i.e. management no. 2 and management no. 3, with whom management no.1 has entered into a sham contract. Neither the management no. 1 is registered under the CLRA nor the so called contractors are having licence for engagement of contract labour. Thus the contract between management no. 1, management no.2 and management no. 3 was sham. The claimant was discharging his duty sincerely but the mgt., in violation of the provisions of ID Act illegally terminated his service since he was often demanding equal pay for equal work, weekly holidays, leave salary, bonus, over time dues etc. Being aggrieved by the illegal termination, the claimant served a demand notice on the mgt. But the mgt. did not reply to his notice. Finding no other way the claimant raised an industrial dispute before the conciliation officer for which a conciliation proceeding was initiated. For the adamant attitude of the mgt. the conciliation failed and the claimant came of with the present application seeking the relief of reinstatement with all consequential benefits and continuity of service.

The mgts. though noticed did not appeared and thus, by order dated 14.12.2021 all the mgts. were proceeded ex-parte.

The claimant examined himself as WW1 and produced the documents which have been marked in a series of exhbt. WW1/1 to WW1/5. These documents include the salary details paid to the claimant on different dates by mgt. no. 2 the photocopy of the bank pass book showing deposit of his

salary by mgt. no. 2, photocopies of the cheques issued to the claimant by mgt. no.2. In addition to this, the claimant has also filed the representation made by him to the mgt. no. 1 ventilating his grievance for illegal termination. In his sworn testimony the claimant has stated that the mgt. while terminating this service had neither served the notice of the termination nor paid termination compensation or notice pay. Thus there was gross violation of the provisions of ID Act. It has also been stated that he had served for the mgt. no. 1 and there exists employer and employee relationship between them. Hence the mgt. no. 1 is liable to pay the relief as prayed by him as the principal employer.

This evidence of the claimant stands uncontroverted and unrebutted. During course of arguments the Id. A/R for the claimant submitted that the claimant has successfully proved his relation as the employee of mgt. no. 1 and circumstance clearly proves violation of section 25 F of the Id Act. Hence, the mgt. no. 1 be directed to reinstate the claimant into service. To support his contention he relied upon the case of **Sachiv, Krishi Upaj Mandi Samiti, Sanawad vs. Mahendra Kumar 2004 LLR 405**, and argued that when the termination falls under the category of violation of Section 25 F of the Id Act, the workman is entitled to reinstatement and full back wages.

As stated in the previous paragraph the oral and documentary evidence of the claimant has remained unchallenged. But the said evidence only proves that the employment of the claimant was under mgt. no. 2 i.e. Shakti Anand Security Agency who was paying him salary. There is absolutely no evidence to believe that the claimant was working under the supervision and control of mgt. no. 1. Hence, it is felt that the mgt. no. 2 is liable to grant the relief to the claimant for the illegal termination of the service. Hence Orderd.

Order

The claim be and the same is allowed. It is held that the service of the claimant was illegally terminated by mgt. no. 2 in gross violation of the provisions of Section 25 F and 25 G of the ID Act. For such illegal

termination the mgt. no. 2 is directed to reinstate the claimant into service with his last drawn wage within one month from the date of publication of the award and shall maintain continuity of his service and grant him the full back wages from the date of termination of service that is from 01.10.2019 till the reinstatement is effected. In addition to this the m2 that is Shakti Anand Security Agency shall also pay 25000/ to the claimant towards litigation expenses. This amount along with the back wages shall be paid to the claimant without interest within the time stipulated as above, failing which the amount shall carry interest at the rate of 6 per cent per annum from the date of accrual and 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.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
13th March, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
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