

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. 07/2022

Date of Passing Award- 16th May 2023

Between:

1. Shmt. Vimla Devi, W/o Late Sh. Vijay Singh, &
2. Smt. Savitri Devi, W/o Late Sh. Bimlesh Kumar,
Through- CPWD Mazdoor Union,
Room No.95, Barrack No.1/10, Jam Nagar House,
Shahjahan Road, New Delhi-110011.

Workman

Versus

The Director General (Works)
Central Public Work Deptment (CPWD)
Nirman Bhawan,
New Delhi-110001

Management

Appearances:-

Shri B.K Prasad, Ld. A/R for the Claimant.

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 (i) The Director General (Works) Central Public Work Deptment (CPWD)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-42011/124/2021-(IR(DU))dated 07/12/2021 to this tribunal for adjudication to the following effect.

“Whether the demand of Central P.W.D Mazdoor Union vide letter dated 3.10.2017 in respect of Smt. Vimla Devi and Smt. Savitri Devi for all services benefits after death of her husband Late Vijay Singh and Late Bimlesh Kumar respectively to CPWD, Nirman Bhawan, New Delhi-1 is proper, legal and justified? If yes, to what reliefs the disputant are entitled to what other directions, if any, are necessary in the matter?”

As per the claim statement the claimants who are two in number (as per the list enclosed) are the legal heirs of the ex employees of the mgt namely Late Vijay Singh and Late Bimlesh Kumar. The said two persons were working in the post of Mali and died while in service. Their services are deemed to have been regularized with effect from 07.12.1990 when the services of their juniors were regularized. After the death of Vijay Singh and Bimlesh Kumar the present two claimants were appointed on compassionate ground. But the family of Late Vijay Singh and Bimlesh Kumar who are Shmt. Bimla and Shmt. Savitri respectively and the claimants of this proceeding were not allowed the pensionary benefits. It has further been stated that, Late Vijay Singh and Bimlesh Kumar were working as Muster Roll Employees on daily wage basis with the mgt. Though the Hon’ble Supreme Court in the case of Surender Singh had

directed for regularization of the service of the daily wager, implementation of the same was delayed by the mgt and Vijay Singh died on 31.07.1988 after working for 3 years and 6 months. Similarly, Bimlesh Kumar also died on 07.05.1987 after completion of work for one year and four months as Muster Roll Employees on daily wage basis.

The Hon'bl Supreme Court in the case of **Surender Singh and another vs. Engineer in Chief CPWD and Ors.** had allowed the writ petitions and directed equal pay to the daily rated employees at par with the regular and permanent employees from the date of their initial appointment. The mgt CPWD filed a revision petition challenging the said order which was dismissed the daily rated workers of CPWD went into a strike demanding implementation of the said judgment. A settlement was arrived between the representative of the CPWD workers union and the mgt wherein it was agreed that the judgment of the Hon'ble Supreme Court in the case of Surender Singh is to be implemented. But, the husband of the present claimants died before implementation of the said judgment. In the meantime, both the claimants were given compassionate appointment in the post of Mali on the Muster Roll against the vacancy occurring on account of the death of their husbands. While the matter stood thus, the service of the persons junior to the husbands of the claimants and appointed in the Muster Roll were regularized with effect from 07.12.1990 hence the service of Vijay Singh and Bimlesh Kumar deems to have been regularized from that day and the pensionary benefits should have been granted to the claimants. Earlier, the claimants had filed ID no. 30/2015 challenging their appointment as daily rated workers on compassionate ground and the award was passed in their favour in the said ID no. 30-2015. But the mgt has challenged the same before the High Court which is now pending.

The claimants, though made representations to the mgt praying that the services of their Respective deceased husband be regularized with effect from 07.12.1990, as the services of their juniors have been

regularized from that date. But the mgt did not consider the same and the claimants raised a dispute before the conciliation officer. For the non-cooperation of the mgt the conciliation failed and the appropriate govt. referred the matter to this Tribunal for adjudication.

Though noticed, the mgt did not appear nor filed written statement. Hence by order dated 31.10.2022 the mgt was proceeded ex-parte.

On behalf of the claimants the General Secretary of the CPWD Mazdoor Union testified as their authorized representative. He stated that Late Vijay Singh husbands of the claimant Vimla Devi and Late Bimlesh Kumar husband of claimant Savitri Devi were appointed on Muster Roll as Mali on 22.01.1985 and 01.01.1986 respectively. Both of them died during their employment on 31.07.1988 and 07.05.1987 respectively. After their death the mgt of CPWD regularized the service of their juniors with effect from 07.12.1990 in view of the judgment passed by Hon'ble Supreme Court in the case of **Surender Singh and another vs. Engineer in Chief CPWD**. In view of the judgment of the Hon'ble High Court of Delhi in the case of **Director General of works CPWD vs. Devender Singh** dated 18.04.2004, the deceased employees are deemed to have been regularized on the date when the service of their juniors was regularized and his family members are entitled to family pension. These claimants though granted compassionate appointment in the muster Roll have been denied family pension to which they are entitled to. The witness has filed several documents including the award of this Tribunal passed in ID no. 30/2015 allowing the claim of the claimants for regularization of their services in the post of Mali on compassionate appointment. Exbt. Ww1/6 is the copy of the order for regularization of service of the Muster Roll Employees appointed in the year 1986. On the basis of this document the witness has stated that that husband of the claimants namely Vijay Singh and Bimlesh Kumar if had been alive, their services would have been regularized and for that reason the family would have been benefited by family pension. This statement of the claimants has remained unchallenged and unrebutted. Thus the

claim should be allowed and the reference be answered in their favour.

The documents filed by the claimant and the oral evidence clearly shows that considering the judgment of Surender Singh referred supra the mgt of CPWD issued a notification in respect of the Muster Roll daily rated Employees employed in the year 1988, who were regularized with effect from 07.12.1990. The names of the husbands of the claimants do not find place in the said list. The list has been marked as ww1/6. It is evidently clear that the names of the husbands Vijay Singh and Bimlesh Kumar do not find place in the documents marked as ww1/6 as they were dead on 07.12.1990.

The Ld. A/R for the claimant argued that as per the judgment of the Apex Court in the case of surrender Singh persons appointed as a daily rated workers are entitled to regularization within 6 months from the date of their appointment. He also pointed out citing the judgment of the Hon'ble Supreme Court in the case of **Union of India vs Vijay Chand** decided in **SLP no. 9200/2007** wherein the Hon'ble Supreme Court while dismissing the special leave petition filed by the mgt directed that the service of Vijay chand be regularized as the case of other employees standing in the same footing. By this order the Hon'ble Supreme Court confirmed the judgment passed by the Hon'ble High Court of Delhi in the case of **Union of India vs Vijay Chand**. While fully agreeing with the principal decided in the said cases this tribunal finds no reason of giving a direction to the mgt for regularizing the service of Vijay Singh and Bimlesh kumar with effect from 07.12.1990 when his juniors were regularized in service for the simplest reason that a person not in existence cannot be held entitled to the benefits granted prospectively. IN this case when Vijay Singh and Bimlesh Kumar died on 31.07.1988 at 07.05.1987 respectively and were not in the employment of the mgt CPWD when the order of regularization was passed, it will be unjustified to give a direction for regularizing the service of some dead persons with effect from 07.12.1990 the order which is of prospective implementation and thereby grant pensionary benefits to the family members of the said

employees. Hence it is concluded that the claim advanced by the claimant is not tenable under law and the reference is liable to be answered against them. Hence ordered.

Order

The reference be and the same is answered against the claimant. It is held that the claim of the claimants is not legal and justified and they are not entitled any relief.

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.
16th May, 2023.

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