

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. 158/2015

Date of Passing Award- 19th April,2023

Between:

Shri. Jitender Singh S/o Sh. Om Prakash, Lift Operator,
C/o All India Central PWD (MRM)
Karamchari Sangathan (Regd),
House No.4823, Gali No. 13,
Balbir Nagar Extention,
Shahdra, Delhi-110032

Workman

Versus

1. The Director General of Works
CPWD, Nirman Bhawan
New Delhi
2. The Executive Engineer
Air Conditioning Division-5
CPWD, Vidyut Bhawan,
New Delhi

Managements.

Appearances:-

Sh. Satish Kumar Sharma. Ld. A/R for the claimant
Sh. Avtar Kaur Dingra, A/R 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 the claimant was engaged to work as a Lift Operator in the premises of the mgt CPWD at Asia House Curzon Road and Foreign Affair Building New Delhi with effect from 12.05.2013 through a contractor. The contractor engaged for hiring the service of the workman was changed from time to time but the workman continued to perform his duty till 10.05.2014. He was performing duty in a 12 hour shift at both the places without break. But he was not getting the minimum wage notified by the Govt. and all other statutory benefits like overtime allowance, leave etc. On account of the same, the workman was often raising demand, which caused annoyance in the mind of the mgt CPWD. Hence, the JE of CPWD by an oral order illegally terminated his service on 11.05.2014. At the time as such termination, the provisions of section 25F of the ID Act was not followed. Though his appointment was through the contractor, he was in fact serving under the mgt CPWD and performing the duty of Lift Operator in the establishment of the mgt which is a part of their primary and obligatory service. The mgt CPWD is having regular sanctioned posts of Lift Operator and regular employees are working in such posts all over India and enjoying the benefits of regular employees. Once the claimant had raised a dispute about the minimum wage before the appropriate authority and the mgt CPWD appeared before the said authority and informed that the claimant has been engaged through the contractor and all the benefits he is entitled to shall be granted. But CPWD did not stick to the same. The representation filed by him was not replied. When the matter stood thus, the mgt terminated his service and the claimant made a representation to the Executive Engineer CPWD Vidyut Bhawan requesting reinstatement. As no action was taken the claimant approached the union which too took up the matter. But no fruitful result could be achieved. Finding no other way the claimant raised a dispute before the conciliation officer and during the hearing before the Conciliation Officer, it was intimated that the claimant has taken full and final settlement from the mgt which was a false statement. For the failure of the conciliation, the claimant filed the present claim petition asserting that he was engaged directly under principal employer CPWD and performing the duties under the supervision and control of the JE/AE of CPWD. Hence, for the illegal termination of

his service the mgt be directed to reinstate him into service with back wages and also to regularize his service from the date of his initial employment with regular pay and other benefits at par with the regular counter parts.

The mgt CPWD being noticed, filed written statement denying the stand taken by the claimant. It has been stated that CPWD is an office functioning under the Ministry of Urban Development and it has it's own rules and regulations for appointment of the employees. The regular employees of CPWD are governed by CCS regulation and statutory instructions issued by DOPT. The claimant was never appointed by the mgt CPWD and as such, his claim for regularization for service and reinstatement with back wages is baseless. It has been specifically stated that the CPWD, following the codal procedure awards contract to different contractors for execution of specific nature of work. The said contractor after entering into the contract, engages persons to accomplish the work. The persons engaged by the contractor are the employees of the said contractor and can never be construed as the employees of CPWD. For all purposes, the contractor is the principal employer of the persons engaged by him. The mgt has admitted that claimant was appointed as a Lift Operator on 12.05.2013 by M/s Akash Enterprises and he was working under one shift at Asia House. The said area was earlier not under the supervision of the answering mgt. It was under ECD-VII division of CPWD. The said site was transferred to ACD-V on 09.09.2013. As per records available the claimant was initially engaged through M/s Akash Enterprises who was awarded a contract for 8 months i.e. from 12.12.2012 to 23.09.2013. Thereafter, another contractor namely M/s Guruji Elevator was awarded with the contract. But the claimant continued to work as the Lift Operator in Asia House and performing the duty on shifts. On exceptional circumstances and with his consent, he was working for 12 hours. While matter stood thus on, 11.05.2014 the contractor was asked to change the duty of the claimant from the said site as there were reports about his anti-social behavior and the Resident Welfare Association had doubt with regard to the involvement of the claimant on the repeated occasions of theft. One police complaint and enquiry was also made against the claimant. The CPWD in order to retain it's image asked the contractor who was the employer to change the location of the claimant from that site. But the claimant refused his relocation to the other site and accepted his full

and final settlement from the office of the said contractor on 12.05.2015. He also signed the papers relating to his full and final settlement without any pressure from any quarters. The claimant had never made any allegation with regard to non payment of minimum wage to him by the contractor or denial of the statutory benefits. The mgt CPWD only came to know about the grievance of the claimant after getting notice of this proceeding. Thus the mgt has stated that the claim filed by the claimant against CPWD is not maintainable and he is not entitled to the relief sought for.

In the written replication the claimant stated that after the contract labour prohibition notification, neither the mgt CPWD got itself registered under section 7 of the CLRA Act nor the so called contractor has license in terms of section 12 of the said Act. The claimant, since was discharging duty in connection with the affairs of the mgt and in the premises of the mgt under it's supervision and control, he is entitled to the relief and be treated as the employee of the mgt CPWD.

On these rival pleadings the following issues were framed for adjudication

Issues

1. Whether there exists employee and employer relationship between the workman and the mgt? if so its effect.
2. Whether the contract system in this case is sham and camouflage ? if so it's effect.
3. Whether the claim is barred by time? If so, it's effect.
4. Whether workman Sh. Jitnder Singh is entitled to reinstatement in service with full back wages since he is alleged illegal termination? If so its effect.
5. Whether workman is entitled to regularization of service with effect from the initial date of appointment with regular pay and allowances?

The claimant examined himself as WW1 and relied upon the document marked as WW1/1 to WW1/7. These documents include the log books allegedly containing the signature of the JE some documents relating to repair of the elevator by the engineers in which the signature of the claimant was taken as the customer, the ID card

issues to the claimant by the contractor and the bill raised by the contractor. On behalf of the mgt one Narender Kumar, executive engineer testified as MW1. While supporting the averments made in the w.s, he described the claimant as a person engaged through the contractor for discharging the duty of lift operator. He has also relied upon few documents which include the contract entered between the CPWD and contractor namely M/s. Guruji Elevator and M/s. Akash Enterprises. He has also filed the copy of the log books maintained by M/s. Guruji Elevator and M/s. Akash Enterprises the contractors engaged for the work. With this the witness has stated that the claimant was never the employee of CPWD and there was no need for registration under the CLRA as at no point of time more than 20 persons were ever engaged by CPWD in the work of lift operator. Both the witnesses were cross examined at length by their adversaries.

At the outset of the arguments, the Ld. A/R for the claimant submitted that this is a typical case of unfair labour practice meted to the claimant. He was engaged in the premises of the mgt to act as the lift operator and the mgt after the abolition of the contract labour system had never registered itself under CLRA for engagement of contract labour. The agreement between the mgt and the contractor is sham and intended to camouflage the legal rights of the claimant. On the other hand, the Ld. A/R for the mgt argued that there was valid and legal contract between the mgt CPWD and the contractors for operation of the lifts. As a part of the work assigned the contractor had engaged manpower and the claimant being engaged by the contractor for execution of the work assigned to the contractor, has not relationship with CPWD. The ld. A/R for the mgt submitted that the claimant in a mischievous move had obtained the photo copy of the log books unauthorizely. But the said log books and the payment made by the contractor towards his full and final settlement clearly proves that he was a n employee of the contractor.

Finding

Issue no 1,2&5

All the issues being inter dependent are taken up for consideration together..

In his pleadings the claimant had admitted at one point of time that he was employed through the contractor M/s Akash Enterprises.

At the other point he has stated that he was the employee of CPWD and getting the remuneration in cash from the JE. Except the log book containing the signature of the JE at some places no other documents have been filed by the claimant to establish a connection between him and the mgt CPWD as its employer. The I-Card produced by him and exhibited was also issued by the contractor. The mgt has filed the contract document entered between CPWD and Akash Enterprises and CPWD and Guruji Elevators which proves that there was a valid contract between the said contractor and CPWD. No evidence has been filed and adduced by the claimant to prove that the said contract was sham and intended to camouflage the right of the claimant. A mere pleading cannot substitute or take place of evidence. In this case, the mgt has stated that for some reason the contractor was asked to relocate the claimant from the site of CPWD at Asia House to Parliament Street. But the claimant refused the proposal and took his full and final settlement. But the claimant has denied the same. It has been described that the said amount of Rs.52,137/- was paid towards arrear minimum wages.

The evidence adduced by the parties and the stand taken by them made it imperative on the part of this tribunal to examine if the claimant, who was admittedly employed through a contractor can maintain a dispute against the mgt CPWD. The law contained in Section 10 of the CLRA 1987, provides for prohibition of employment of contract labour. As per the said provision, the appropriate Govt. in consultation with the Central Board prohibit by notification the employment of contract labour in any process operation or other work in any establishment. While doing so the govt. shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and the relevant factors are:

- A. Whether the process operation or other work is incidental or necessary of the industry or the business carried on in the establishment.
- B. Whether the work is up perennial nature.
- C. Whether it is ordinarily done through regular workman of that establishment.

From the said provision it is evidently clear that the appropriate Govt. may make notification prohibiting employment of contract labour in any establishment. Then the question arose what shall be the status of the contract labour employed in the establishment. The question was decided by the Hon'ble Apex Court in the case of Steel authority of India (2001(7)) SCC1) the apex court ruled that there cannot be automatic absorption of contract labour by principal employer or issuance of notification of the govt. It was further held that after prohibition notification issued, if any industrial dispute is brought before the Tribunal or court, the industrial adjudicator has to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade complains of beneficial legislation so as to deprive the workers of the benefits therein. In the said judgment of **Steel Authority of India**, it has also been held where a workman is hired in or in connection with the work of a establishment by the principal employer through a contractor, he merely acts as an agent. So there will be master and servant relationship between the principal employer and the workman. But when the workman is hired in or in connection with the work of an establishment by a contractor either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment the persons were employed shall be the employee of the contractor.

In this case, the claimant, as admitted by him was engaged as the Lift Operator through the contractor and the mgt CPWD has produced documents to prove the valid contract entered between the contractor and the mgt for execution of the work. Since the claimant was engaged by the contractor for accomplishment of the work assigned to the contractor, it cannot be construed that the claimant was engaged for the work of the establishment CPWD and an employee of CPWD. In this case the claimant has not adduced any evidence to prove that he was working under the supervision and control of the mgt or getting remuneration directly from the mgt. Though he had made an oral statement about the remuneration received by cash from JE, neither any document has been produced nor called for by the claimant. He had worked for a period of one year only as lift operator

through two separate contractor who were awarded the work by CPWD. In absence of proof on the employee employer relationship and in absence of evidence to the effect that the claimant was working under the supervision and control under the mgt CPWD it is held that the claimant had failed to prove his relationship as the employee of CPWD. The contract entered between CPWD and the contractor in absence of proof to the contrary, is held to be genuine and not sham. The claimant is held not entitled to reinstatement or regularization of service. All the issues are answered against the claimant. Hence ordered

The claim be and the same is dismissed on context. The claimant is held not entitled to the benefit prayed for.

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.
19th April, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
19th April, 2023.