

**BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL
GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI**

ID.NO. 152/2021

Sh. Sanjeev Kumar, S/o Sh. Vijay Pal Singh,
R/o F-247, Gali No-09, Molarband, Extn. Badarpur,
Delhi -110044.

Through- All India General Mazdoor Trade Union,
170, Bal Mukund Khand, Giri Nagar, Kalkaji,

...Applicant/Claimant

I.D. No.153/2021

Sh. Haripal Singh, S/o Sh. Rattan Singh,
R/o House No.-G-12/506, Sangam Vihar, Delhi-110080.

Through- All India General Mazdoor Trade Union,
170, Bal Mukund Khand, Giri Nagar, Kalkaji,
New Delhi-110019.

...Applicant/Claimant

I.D. No. 154/2021

Sh. Manjeet Kumar, S/o Sh. Kartal Singh,
R/o House No-29, Near Shiv Mandir, Chirag Delhi, Delhi-110017.

Through – All India General Mazdoor Trade Union,
170, Bal Mukund Khand, Giri Nagar, Kalkaji,

...Applicant/Claimant

VERSUS

- 1. The Manager, Standard Chartered Bank,**
M-01, South Extn. Part-02, New Delhi-110049.
- 2. The Managing Director, Xerox Indian Ltd.,**
5th Floor, Block- 01, Vatika Business Park-49,
Sohna Road, Gurgaon-122018,

3. The Managing Director, Thakkar Manpower Services Pvt. Ltd.,

Sh. Sandeep Thakkar S/o Sh. Basant Lal Thakkar,
C-03/257, Backside Ground Floor, Janak Puri, New Delhi-110058.

Also At: A-152/01, 1st Floor, Plot No.33, Ganesh Nagar,
New Delhi-110018.

AWARD/ORDER DATED

By this Composite order I shall dispose of these three cases filed by the claimant. These cases have been taken together for disposal because in all the cases respondent are same. Issues are also same. Only the workmen are different.

Workmen have been working with management no.-1 through contractor and sub-contractor **Messers-Xerox India Ltd. and Thakkar Manpower Services Pvt. Ltd.** as photocopy machine operators as well as photo state machine maintenance since July 1997, January 2005 and January 2017 respectively. During their services they have not given any chance to complain to anyone. Management has deprived them from legal facilities. Their cases have been pending for collective demand before sh. **Rajiv Mehra**, Ld. Presiding Officer Industrial Tribunal. For this reason management had given notice on 01.10.2020 for terminating their services without taking the permission of the concerned tribunal on 07.10.2020. Workmen had sent the demand notice through speed post to the management on 08.10.2020 for taking back them on duty but management had not given any reply nor they have been taken back on duty. Workmen had sent through their union, a written complaint to the regional Assistant Commissioner but management had not produced the record of the workman before the Labour inspector. Hence, the workmen had filed their claim with prayer to take back them on duty with full back wages.

Respondent no-1 has not appeared and ultimately he was proceeded ex-parte vide order date 6th May 2022. Respondent no.-2&3 had filed their respective written statement denying the averment made by the claimant in their claim petition. Respondent no-2 had stated that there exists no relationship of the employer and employee between the respondent no-2 and the claimant. Respondent no-3 had informed the respondent no-2 that he had paid the workmen their full and final settlement amount.

Respondent no-3 had taken the preliminary objection about maintainability of the petition on the ground that no relationship between employee and employer have been existed and claim is liable to be dismissed.

From the pleadings of the party vide order dated 21.09.2022 following issues have been framed:

1. Whether the proceeding is maintainable.
2. Whether there exist employer and employee relationship between the management no-1&2 and the claimant.
3. Whether service of the claimant was illegally terminated and if so, by whom.
4. To what relief, the claimant is entitled to.

Claimant is asked to examine the witness. Even the witnesses are present. However, this court has asked from the workman AR how the claim of the workmen are maintainable before this tribunal because none of the respondent is the central government institutions or industry. Respondent no-1 is the manager, Standard Chartered Bank. Respondent no-2 is the managing director, Zerox India Ltd., Respondent no-3 is the managing director, Thakkar Manpower Pvt. Ltd.

Section-2 a of I.D Act (hereinafter is called as an Act) define the expression 'appropriate government'.

Appropriate government is the central government in relation to any industrial dispute which pertain to any industry carried on by all under the authority of central government.

Section-2(a)(1) of the Act give the detail expression of covering the industry which falls under the definition of central government controlled industry. It is reproduced

'in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labor Board established under Section 5A of the Dock

workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees Provident Fund and Miscellaneous provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporations of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporation Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [[an air transport service, or a banking or an insurance company,] a mine, an oil field,] [a cantonment Board,] or a [major port, any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this

clause, established by or under any law made by parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

Ld. AR of the workman is unable to tell how this tribunal has the jurisdiction to try their claim particularly when the appropriate government is not the central government in respect of the respondent herein. Ld. AR has only stated that the Sh. Santosh Kumar Assistant Commissioner (Central) Delhi-III had given the failure report U/s 2 A of the Act and for this reason he had filed their claim. He further asserted that this tribunal has the jurisdiction in view of the failure report given by the Assistant Commissioner (Central).

Section-2 A have been inserted by Act 35 of 1965 in the Act and provide that the dismissal, discharge, retrenchment and termination of individual employee/workman shall be deemed to be an Industrial Dispute and give an option to the workmen to file the claim directly by filing an application to the labour court or tribunal for adjudication. However, it is subject to the condition that first, he will make an application to the conciliation officer of the appropriate government for conciliation of the dispute. However, the application has to be made before the tribunal after expiry of the Forty-five days of moving the application before the conciliation officer.

Section-2 A of the Act is reproduced herein for the sake of convenience

‘[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. [(1)] where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial

dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute]

Section 2 A (2) which has been inserted by Act 24 of 2010 has categorically mentioned that the application has to be made to the conciliation officer of the appropriate government. However, the Assistant Commissioner (Central) Delhi-III is not the conciliation officer of the appropriate government herein because none of the respondent has come within the definition of the Central Government. He has exercised the jurisdiction which has not been vested upon it.

Even the case of the claimant is that Industrial Dispute of general demand is pending before the Industrial Tribunal of State of NCT of Delhi headed by Sh. Rajiv Mehra.

In these circumstances, this tribunal has found that it has no jurisdiction to try the claim of the workmen. Hence, the claim of the workmen stand dismissed for want of jurisdiction. Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. A copy of this award is also sent to the Central Labour Commissioner for information and action.

Date 20th November, 2023

Presiding Officer.
CGIT-cum-Labour Court-II.