

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. 06/2022

Date of Passing Award- 22nd May, 2023

Between:

1. Sanjay Kumar S/o Sh. Chander Mohan, and
2. Sh. Vicky S/o Sh. Vinod Kumar
As rep. by Janwadi General Kamgar
Mazdoor Union.

Workmen

Versus

M/s. Directorate General of Training
Ministry of Skill Development and
Entrepreneurship.

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. M/s. Directorate General of Training Ministry of Skill Development and Entrepreneurship 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-42011/156/2021IR(DU)) dated 07.12.2021 to this tribunal for adjudication to the following effect.

“ Whether the management of Directorate General of Training (DGT) under Ministry of Skill Development and Entrepreneurship falls within the definition of ‘industry’ under the Industrial Disputes Act, 1947?

If yes, whether the claim of Janwadi General Kamgar Mazdoor Union, New Delhi vide letter dated 27.06.2019 in respect of disputant Sh. Sanjay kumar S/o Sh. Chander Mohan and Sh. Vicky S/o Sh. Vinod Kumar to the management of Directorate General of Training (DGT) under Ministry of Skill Development and Entrepreneurship that Sh. Sanjay kumar and Sh. Vicky are entitled to ‘equal pay for equal work’ with the consequential benefits except increments w.e.f. 08.02.2013 and 05.05.2014 respectively and regularization is proper, legal and justified? If yes, to what relief the disputants are entitled to what directions, if any, are necessary in this regard?”

As per the claim statement that the workmen connected with this dispute namely, Sanjay Kumar S/o of Chander Mohan and Vicky S/o Vinod Kumar were initially appointed with the Directorate General Employment and Training under the Ministry of Skill Development and Entrepreneurship as Group D employees now called MTS. The service of these workmen was transferred from the Ministry of Skill Development for the Directorate General of Employment. All the workmen are performing their duty in the grade pay of 1800, level 1 against the regular post of MTS. But the mgt is paying them less wage in comparison to the regular counterparts working as Group D employees. These workmen are getting the minimum wage fixed for unskilled workmen revised from time to time. But these workmen are entitled to be granted regular pay scale with all allowance except the increments from the date of their initial appointment at par with the regular Group D employees on the principle of equal pay for equal work. The denial by the mgt to grant them equal pay and regularize their service amounts to unfair labour

practice. All the efforts made by the claimants by filing representations turned to be futile. Citing various judgments of the Hon'ble Supreme Court the claimants have pleaded that they are working continuously for the mgt and have completed 240 days of work in a calendar. On that account, they should have been regularized in service and granted equal pay for equal work in view of the office memorandum no. 49014/2/86 Estt(C) dated 07.06.1988 issued by DOP&T. It has further been stated that the workmen are within the minimum age group for regular appointment and they fulfilled all the qualifying conditions. But the mgt by order dated 11.06.2019 changed the service condition of these workmen to daily wagers. This change of service condition is violated of the principle laid down by the Hon'ble Supreme Court in the case of **FCI vs. FCI India**. When the efforts of the claimants for regularization of their service and for grant of equal pay for equal work failed, they approached the conciliation officer by raising a dispute. Steps were taken to conciliate the dispute. But for the non-cooperative attitude of the mgt the conciliation failed and the appropriate govt. referred the matter to the Tribunal for adjudication.

Though noticed the mgt did not appear and was proceeded ex-parte by order dated 01.08.2022. The claimant filed the affidavit supporting the averments made in the claim petition and filed few documents which have been marked in a series of WW/1 to WW/5. These documents include Annexure A which includes the details of the workmen including the date of their initial appointment and place of posting. WW1/2 is the office memorandum of the mgt transferring the claimants to the mgt of Skill Development. WW1/3 is the office memorandum relating to the recruitment of casual workers and persons on daily wage basis by which the service condition wage etc. of the casual workers has been laid down. WW1/4 is the failure report of the conciliation officer and WW1/5 is the letter of espousal.

The president of Janwadi General Kamgar Mazdoor Union representing the claimants testified as ww1. They fully supported the claim averments and stated that the Hon'ble Supreme court in the

case of **Surender Singh and Ors vs. Engineer in Chief CPWD** have clearly held that the persons engaged as a daily rated workers are entitled to be regularized in the time scales on completion of 6 months of their continuous service. In this case the claimants are working continuously in the mgt w.e.f from 08.02.2013 and 05.05.2014. They purchased requisite qualification for appointment against the permanent post of MTS. This evidence of the witness for the claimants has not been challenged since the mgt has been proceeded ex-parte. Thus from the uncontroverted and unchallenged evidence by the claimants it is evidently clear that the workmen of this proceeding are working continuously for the mgt since the date of their initial appointment and have worked for more than 240 days in a calendar year. This entitles them for regularization of service in absence of the proof that the claimants do not meet the qualification criteria or there are no vacancy. Hence, considering the evidence of the claimant it is held that the claimants entitled to the relief sought for.

The Ld A/R for the claimants by citing the judgment of Hon'ble Supreme court in the case of **Bangalore Water Supply & Sewerage Board, Etc., Etc. vs. A. Rajappa and others, Etc. Etc. reported in 1978-LLJ-I-349** submitted that all the triple test prescribed by the Hon'ble Supreme court to test if an establishment comes under the definition of industry are fulfilled by the mgt. Hence it is concluded that the mgt is an industry. Hence considering the submission and the evidence on behalf of the claimant it is concluded that the claimants are entitled to the regular pay scale with all allowances except the annual increments from the initial date of their appointment. They are also entitled to regularize in service in the time scale from the date they completed first initial 6 months of employment. Hence ordered

Order

The reference be and the same is answered in favour of the claimant it is held that the claimants are entitled to regular pay scale at par with the regular employees who are their counterparts including all allowances except the annual increments. The claimants are held

further entitled to regularization of their service on the date they completed 6 months from the date of initial appointment. The mgt no.1 is directed to grant the equal pay for equal work and the differential arrear to the claimants from the date of their initial appointment and their service shall be regularize on the date when they completed first 6 month of their service. The financial benefits granted to the claimants shall be paid by the mgt within two months from the date when the award is published failing which the amount show accrued shall carry interests at the rate of 6 per cent per annum from the date of accrual and till the final payment is made. This award is passed in respect of those employees whose list has been annexed to this award as annexure A:-

List of the workmen

S.No.	Name	Father's Name	Category	Post	Date of joining	Educational Qualification
1	Sanjay Kumar	Chander Mohan	O.B.C.	Daily wager (M.T.S)	08.02.2013	B.A. Pass
2	Vicky	Vinod Kumar	S.C	Daily wager (M.T.S)	05.05.2014	9 th Pass

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.
22nd May, 2023

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