

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. 121/2012

Date of Passing Award- 22nd August, 2022.

Between:

Shri Vijay Kumar,
S/o Shri Indraaj Singh,
R/o 190, Pasonda,
Ghaziabad (U.P).

Workman

Versus

The General Manager,
Central Electronics Ltd.,
4, Industrial Area, Shahibabad,
Ghaziabad (U.P).

Management

Appearances:-

Shri Ashutosh Mishra
(A/R)

For the Workman.

Shri Raj Kumar
(A/R)

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 Central Electronics Ltd., 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- 42012/32/2012 (IR(DU)) dated 09.07.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of CEL in terminating services of workman Shri Vijay Kumar w.e.f 29.09.2010 without complying with provisions of 25N is illegal and unjustified? If so, what relief he is entitled to?

As per the claim statement the claimant was appointed as a helper in the establishment of the management i.e Central Electronics Limited w.e.f June 1992. During this employment he was discharging his duty with dedication giving no scope of complaint to anybody. On 07.09.2010 while on duty he met with an accident and his hand came in contact with a machine which damaged one finger of his right hand. He was taken to hospital immediately and received treatment. Intimation being given about

the accident to the management he was assured that his service will be resumed once he gains full fitness. On 24.09.2010 when he reported for duty, the management refused to accept him and his demand for payment of the treatment expenditure was also turned down. After 24.09.2010 he contacted the management several times with a request to allow him to join the duty. But no action was taken. Finding no other way he approached the conciliation officer by filing a claim statement. It was alleged that he was working for the permanent nature of post and had completed 240 days of work in a calendar year. But the management while terminating his service did not follow the procedure laid down under the ID Act nor the provision of section 25N was complied. Hence, he prayed before the conciliation officer for reinstatement with full back wages and continuity of service. But the conciliation failed and the appropriate government referred the matter for adjudication.

Being noticed the management appeared and filed written statement challenging the claim on factual as well as on legal grounds. The stand taken by the management is that the claim is not maintainable for want of espousal as it is an individual dispute. Furthermore, the management has stated that there exists no relationship as employer and employee between the management and the claimant. The management had outsourced some service to a contractor named Sybex Computer System Pvt. Ltd. and the said contractor had deployed employees in the premises of the management including the claimant Vijay Kumar. The said contractor on 29.10.2010 had intimated that the claimant Vijay Kumar resigned from the employment w.e.f 29.10.2010 on receiving all his dues towards full and final settlement. Thus, the management has stated that the claim advanced by the claimant alleging illegal termination and praying reinstatement is false, baseless and liable to be rejected.

On these rival pleadings a following issues were framed for adjudication.

ISSUES

1. Whether there exists employer and employee relationship between the parties.
2. As in terms of the reference.

The claimant testified as WW1 and proved the documents marked in a series of WW1/1 to WW1/5. These documents include the copy of the notice served on the management the original bank pass book of the claimant photocopies of the medical document, photocopy of the ID Card and entry pass. On the other hand the management examined one Mr. Rajat Garg the AGM (HR) of the management and filed documents marked as MW1/1 which is the correspondence received from the contractor with regard to the claimant. The management also filed a number of documents which are photocopies and thus, made a prayer to summon the Director of M/s Sybex Computer System Pvt. Ltd. to produce the originals of the document filed by the management. In response thereto the Director of the Company testified

as MW2 and filed a series of documents which are certified true copies and marked as MW2/1 to MW2/10.

At the outset of the argument the Ld. A/R for the workmen submitted that the claimant had worked for the management from June 1992 to 07.09.2010 and had completed 240 days in the preceding calendar year. In view of the same the management while terminating his service should have complied the provisions of section 25F of the ID Act. The counter argument of the Ld. A/R for the management is that the proceeding suffers from non joinder of parties as the contractor was never added. Moreover, the claimant was neither appointed by the management nor ever his service was terminated. In such a situation compliance of the provisions of section 25F of the ID act was not required. He also pointed out that the documentary evidence placed by the management clearly proves that the claimant was an employee of M/s Sybex Computer Pvt. Ltd. and had resigned from the service of the said contractor after meeting with an accident and at the time of resigning had received all his dues towards full and final settlements from his employer i.e the contractor. He also argued that man may lie but not the documents. In this case since, the documents relating to claimants resignation and receipt towards full and final settlement were created during an undisputed point of time, the tribunal should consider the same and dismiss the claim petition.

FINDING

ISSUE No.1

This is the most important issue to be decided in this proceeding. Since the finding on this issue is likely to impact the finding on the other issues. In the case of **Ram Singh and Others vs. Union Territory of Chandigarh and others reported in (2004)1 SCC Page 126** it has been held that for determination of employer and employee relationship the factors to be considered interalia are:

1. Control
2. Integration
3. Power of Appointment and dismissal
4. Liability to pay remuneration
5. Liability to organize the work
6. Nature of mutual obligation etc.

The factual matrix of the present dispute as evident from the oral and documentary evidence is that the claimant was working as a helper in the premises of the management since the year 1992. Whereas the claimant claims that he was working in the said post continuously from 1992 to 2010 no evidence to prove the same has been adduced. It is also a decided Principle of Law that the party who asserts this employer and employee relationship bears the burden of proving the same. But in this case the claimant has not adduced any evidence to prove this aspect. The only

evidence adduced by him is the passbook which contains an entry dated 27.11.2008 under which 3927/- was deposited in the account of the claimant by the management Central Electronics Ltd. The management on the contrary has explained by producing a document which is a money receipt marked as A/1 to say that Vijay the claimant was a labour job contractor and was given the work order to maintain 140 water coolers in the office of the management at the rate of Rs. 30 per cooler. In that respect Rs. 4200/- was payable to the claimant and after deduction of tax Rs. 3927/- was deposited in his bank account. Similarly there is absolutely no evidence, oral or documentary available on record to presume that the management was exercising control on the claimant for integration of the work allegedly done by him. There is also no material on record that the claimant was getting monthly remuneration from the management like its regular employees. No attendance register in acknowledgment of his daily attendance for his duty has been filed. The mutual obligation in the nature of deducting PF subscription and extension of other benefits by the management is no way evident from the documents filed by the claimant. Mere production of a bank passbook containing only one entry showing deposit by the management will not lead to a presumption that the claimant was the employee of the management and getting salary/wage from it.

On the other hand the management has produced and proved through the MW2 certain documents. These are the documents which were produced as attested true copies by the Director of Sybex Computer. The documents include the ESI temporary identity certificate issued to the claimant wherein the name of his employer has been mentioned as Sybex Computer System this document marked as MW2/2 was issued on 07.09.2010 i.e before the alleged termination of service on 24/09/2010. Another document is exhibit MW2/3 which is Form 12 i.e the accident report. This is a document issued by the employer to ESI Corporation intimating the accident met by the employee during course of employment. Which bears the evidence that the claimant was the employee of M/s Sybex Computer Pvt. Ltd. and not of the management Central Electronics Ltd. MW2 has filed two other documents marked as MW2/6 and MW2/7. MW2/6 is a letter issued by the manager of ESIC to the employer asking to produce some documents in respect of the accident case of the claimant. MW2/7 and MW2/8 are the documents evidencing of receipt full and final settlement and resignation letter dated 29.10.2010 submitted by the claimant. During course of cross examination the claimant has admitted his signatures on these two documents. Thus, on a conjoint reading of the oral and documentary evidence it is clearly evident that the claimant was an employee of the contractor i.e. Sybex Support Service Pvt. Ltd. and there never existed any employer and employee relationship between the management and the claimant as the evidence on record no way proves that the claimant was getting monthly remuneration from the management and the management was having supervision and control over the claimant for integration of the work. The management had never issued any appointment letter to him. Accordingly it is held that there

existed no employer and employee relationship between the claimant and the management. Issue No.1 is accordingly decided against the claimant.

Issue No.2

The reference has been received to decide if the termination of the service of the workman by the management is illegal for not complying with the provisions of 25N of the Id Act. But as stated in the preceding paragraph the management was never the employer of the claimant. On the contrary the evidence produced by the management through MW2 clearly proves that the claimant had voluntarily resigned from the service under the contractor and left after receiving full and final settlement. In that view of the matter this issue is decided against the claimant and he is held not entitled to the relief sought for in this claim petition. Hence, ordered.

ORDER

The reference be and the same is accordingly answered against the claimant and it is held the claimant is not entitled to the relief sought for. 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 August, 2022

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