

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. 78/2014

Date of Passing Award- 24th January, 2023.

Between:

Shri Tulsi Dutt,
S/o Late Shri Ganga Dutt,
C/o- Shri Hoob Lal Yadav, General Secretary, Mercantile,
Employees Association, House No. 530,
Near Prem Public School, Dayal Nagar,
PO Amar Nagar, Faridabad, 121003.

Workman

Versus

M/s. Steel Authority of India Ltd.,
Steel Stock Yard-I,
Sector-5, Mathura Road,
Faridabad (Haryana),
Faridabad.

Management

Appearances:-

Shri Subhash Chandra
(Advocate)
Ms. Jaya Tomar
(Advocate)

For the Workman

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 Steel Stock Yard-1, 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- 29012/45/2013 (IR(M) dated 03/04/2014 to this tribunal for adjudication to the following effect.

“Whether applicant Shri Tulsi Dutt is the workman of the Management of the Manager, M/S Steel Authority of India Ltd, Faridabad? If yes,

whether the action of the management in terminating the service of Sh. Tulsi Dutt w. e. f. 1.08.2007 is legal and justified? What relief the workman is entitled to”

As narrated in the claim petition, the claimant workman was working as the canteen boy in the establishment of the management since December 1986 on a monthly salary was Rs 2500/-. His place of work was Steel Stock Yard-I , Sec 5 Mathura Road, Faridabad, Haryana. On 1.08.2007, his service was terminated by a verbal order and he was not allowed to perform his duty which amounts to termination of service. At the time of termination no notice of termination, notice pay or termination compensation was paid to him. The management even did not pay his duty pay and overtime wage for the month of July 2007. The provisions of sec 25F, 25G and 25H, were not complied, which amounts to unfair labour practice. During the period of his employment, his service record was unblemished and no disciplinary action was ever taken against him. He was working under the supervision and control of the management and getting his monthly salary from the said management. Thus the claimant has prayed for the relief of reinstatement with full back wages and continuity of service.

In the written statement filed, the Respondent has challenged the merit of the claim on various grounds including the maintainability of the proceeding. It has been stated that no employer employee relationship exists between the Respondent and the claimant as at no point of time the later was employed by them. Neither he was issued any letter of appointment nor paid salary/wage by the Respondent Management for the alleged period of employment. Thus the allegation of illegal termination of service or subjecting him to unfair labour practice is unfounded. SAIL is a public sector undertaking having it's own Rules and procedure for appointment. No post like canteen boy ever exists in the establishment of the Management. The claimant was never appointed as the canteen boy in the stock yard or the branch sales office Faridabad. For SAIL, once a person is appointed, he is issued with the appointment letter followed by allotment of employee code No. the person is required to sign the attendance Register maintained in the office where he works. He is being paid salary by SAIL and salary slip is issued him at the end of the month. The claimant has failed to produce any of the documents nor any other evidence to prove his relationship with the

management as it's employee. The grievance of illegal termination raised twice by the claimant before the special secretary, labour Dept, Govt. of Haryana was rejected twice for want of evidence. On that ground alone the claim is not maintainable. Moreover, the dispute raised is not an Industrial Dispute and the claimant has no cause of action to raise the dispute. Hence the management prayed for rejection of the claim.

The claimant filed rejoinder denying all the stand taken by the Respondent in the written statement.

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

ISSUES

- 1- Whether Sri Tulsi Dutt is the workman of the management M/s Steel Authority of India Ltd, Faridabad? if so, it's effect.
- 2- If yes, whether the action of the management in terminating the service of Sh Tulsi Dutt w.e.f. 01.08.2007 is legal and justified? If so, it's effect.
- 3- To what relief the workman is entitled to and from which date.

The claimant examined himself as WW1 and produced a series of documents, which are photocopies of the letter written by the claimant to the in-charge of SAIL Faridabad requesting payment towards the food supplied on different dates. Those three letters have been exhibited as WW1/1 to WW1/3 and A-1 TO A-21. Besides those, the claimant has filed photo copies of several vouchers of different dates evidencing payment of canteen subsidies of the yard employees of SAIL, through one Rajpal Singh. The documents also include payment vouchers showing payment to the claimant for serving tea and coffee to the guests in the stock yard of SAIL at Faridabad. The Respondent examined one A. K. Srivastav, the AGM of SAIL as MW1, who produced the letters of the Special Secretary, Dept of Labour, Govt. of Haryana addressed to the claimant intimating that the documents filed by the claimant do not prove his status as an employee of SAIL Faridabad. The reply filed by the Respondent before the labour commissioner during the conciliation has also been filed along with the evidence. Those documents were marked as MW 1/1 to MW 1/3.

The learned AR for the management during argument emphasized that the burden lies on the claimant to prove employer employee relationship, when the Respondent has specifically denied the same. The documents produced by the claimant no way proves the said relationship. When the claimant was not employed by the Respondent, the allegation of illegal termination is a misconception of fact and liable to be dismissed with cost, since the claimant was sufficiently informed by the special secretary, Govt. of Haryana that his claim to be an employee of SAIL is unfounded. Relying on the judgment of the **Hon'ble SC in the case of Workmen of Nilgiri coop Mkt Society vs. State of Tamilnadu and others**, and in the case of **Shambhu and others vs. Sujan Drycleaners and others**, decided by the **Hon'le High Court of Delhi**, he also argued that in absence of convincing evidence the Tribunal cannot accept the claim qua employer employee relationship.

In his counter argument the learned AR for the claimant submitted that in the case of **Chief Regional Manger, Oriental Insurance Co Ltd vs. PO, CGIT Chandigarah and Others** the **Hon'ble High Court of Punjab and Haryana** , on similar facts, came to hold that when the Respondent terminated the service of the workman without complying with the provisions of ID Act and failed to produce the original documents, the same amounts to unfair labour practice and the workman is entitled to the relief sought for.

It is pertinent to mention here that the claimant in this case had filed an application seeking a direction to the management to produce the original documents. But the Respondent denied possession of the documents on the ground that the claimant was never employed by them. Hence by order dated 18/10/2016, the claimant was given the liberty of adducing secondary evidence.

FINDING

ISSUE No 1

This being the most important issue having decisive effect on the other issues has been taken up for consideration first. The claimant in the claim statement and in the affidavit filed as evidence has stated that he was appointed as a canteen boy in the yard of the Management at Faridabad in the month of December

1986 on a monthly salary of Rs 2500/- and had worked continuously till 01.08.2007, when his service was terminated illegally by a verbal order. During the employment he was working under the supervision and control of the Respondent to the utmost satisfaction of the employer. The Management in the WS disputed the stand of the claimant as an employee of the Management. In the WS as well as the witness of the Management has stated the SAIL being a public sector undertaking has its own rules and procedure for Recruitment. Once a person is recruited and appointed, he is granted an employee no. he also gets his salary paid by SAIL and at the end of the month salary slip is granted to him. He is required to sign the Attendance Register maintained by the management. But the claimant since failed to produce any evidence of that nature, the employer employee relationship is not proved.

The claimant during cross examination has admitted in clear terms that no letter of appointment was given to him and his service was terminated by a verbal order. He also admitted that SAIL, in order to fill up the vacancies, usually makes advertisement in local newspaper and also invites candidature through the employment exchange. He has also admitted that his claim as an employee of SAIL was rejected by the special secretary, Labour of Govt. of Haryana. On the basis of this evidence, the management has stated that the employer employee relationship is not proved. But on behalf of the workman it was argued that the litigation is being fought between two un equals. The management is in possession of all the relevant documents. But intentionally suppressed the documents, so that the claim of the workman will be defeated.

Admittedly the claimant was not issued the letter of appointment, employee ID or salary slip, which is ordinarily issued to an employee. In such a situation the workman is required to adduce other evidence suggesting employer employee relationship. **The Hon'ble SC in the case of Ram Singh vs. Union Territory, Chandigarh (2004)1SCC126**, held that:-

“in determining the relationship of employer and employee, no doubt control is one of the important tests, but is not to be taken as the sole test. In order to determine the said relationship, all other relevant facts and circumstances are to be considered including the terms and conditions of the contract.”

In the case of **Balwant Rai Saluja vs. Air India Ltd**, AIR 2015 SC 375, The Hon'ble SC again held that:-

“the relevant factors to be taken into consideration to establish employer employee relationship would include inter alia (i)who appoints the worker, (ii)who pays the salary/remuneration, (iii)who has the authority to dismiss (iv)who can take disciplinary action, (v)whether there is continuity of service (vi)extent of control and supervision.e if there is complete control and supervision.”

With regard to the facts of this case, no appointment letter was issued to the claimant. Hence the claimant had to lead other evidence to prove the employer employee relationship. He has not examined any witness to prove his relationship with the management. No documentary evidence has been placed on record to show that the claimant workman was getting his salary/remuneration from the Management. The documents filed by him are nothing but some written representation to the head of the Management of SAIL at Faridabad, requesting release of fund for the food supplied by him to the labours, Truck Drivers and other employees. The other documents filed show that the employee's food subsidies were released in favour of the claimant for the food supplied and the same was not paid directly but through another person. The vouchers filed by the claimant only show the payment of the food value, value of Gas Cylinder ect to him. But these documents no way prove that the claimant was getting salary as claimed by him from the Management. These documents only prove that the claimant was getting the reimbursement of the food cost, supplied to the employees of the management and the management was releasing the food subsidies payable to the employees to the claimant supplying food to those employees. The oral and documentary evidence adduced by the claimant no way proves that the claimant was working under the supervision and control of the Management. The documents only prove that the claimant was the supplier of food from the canteen to the employees. There is absolutely no evidence to believe that the claimant was discharging his work under the supervision and control of the Management. Hence from the totality of the evidence adduced by the witnesses examined by both the parties, the only conclusion is that the claimant has not succeeded in proving his

relationship with the Management as it's employee. This issue is accordingly answered against the claimant workman.

ISSUE No. 2&3

While discussing the evidence with regard to issue No 1 it has already been held that the relationship of the Respondent and the claimant as employer and employee has not been proved. Since the Management is not the employer of the claimant, it cannot be held that the service of the claimant was illegally terminated by the Management. Hence Issue no. 2 is answered against the claimant. For the finding arrived in respect of Issue No 1 & 2, it is held that the claimant workman is not entitled to the relief sought for. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant. He is held 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.
24th January, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
24th January, 2023.