

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. 192/2015

Date of Passing Award- 25.03.2022

Between:

Shri Yogender Kumar,
S/o Shri Kali Charan,
C/o General Mazdoor Lal Jhanda Union,
Through B-1/A, Nathu Colony (East)
100 Foota Road,
Shahdara, Delhi-110093.

Workman

Also At:

H. No. D-29, Ghazipur village, Near Gaushala Gali,
Delhi- 110096.

Versus

1. The Managing Director,
M/s. Central Warehousing Corporation,
4/1, Siri Fort Institutional Area,
August Kranti Marg, Hauz Khas,
New Delhi- 110016.
2. The Regional Manager,
M/s Central Warehousing Corporation,
Scope Minar, First Floor,
Laxmi Nagar, New Delhi- 110092.
3. The Manager,
M/s. Aqdas Maritime Agency Pvt. Ltd,
32/33, Eastern Chamber,
Fourth Floor, 128-A,
Nandlal Jani Marg (Poona Street)
Mumbai- 400009.
4. The Manager,
M/s Suman Forwarding Agency Pvt. Ltd.
ICD, Near Ghazipur Village,
Patparganj, Delhi- 110096.

Managements

Appearances:-

Shri Md. Nayeemuddin
(A/R)

For the claimant.

Shri Ashok 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 M/s. Aqdas Maritime Agency Pvt. Ltd., 32/33 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-42011/24/2014 (IR(M) dated 16/02/2015 to this tribunal for adjudication to the following effect.

“Whether termination of Yogender Kumar, S/o Shri Kali Charan, w.e.f 03.01.2013 by the management no.4 ie. Suman Forwarding Agency Pvt. Ltd. without making payment of legitimate dues is just, fair and legal? If not what relief will be given to the workman and from which date?” whether the management no. 1 and 2 i.e. central warehousing corporation is responsible to ensure and secure continuance of employment of Yogender Kumar, S/o Shri Kali Charan, in the establishment of new contractor appointed for undertaking the job of such contractor i.e. management no.3 M/s Aqdas Maritime Agency Pvt. Ltd. if not what relief the workman concerned is entitled to?”

As per the claim statement the claimant was in the employment of management No.1 and 2 w.e.f 10.01.1995 in the post of helper on the last drawn wage of Rs. 7300/-per month. He was initially engaged through a contractor. Thereafter management No.1 and 2 went on changing the contractors but the claimant continued to work for the management no.1 and 2. The last contractor was M/s Aqdas Maritime Agency Pvt. Ltd. which had entered into a valid contract under management No.1 and 2. The claimant was performing the duties as per the instruction of the management with all sincerity, devotion and dedication. At no point of time he had given scope to the employer of any complain. The Regional Manager R.O, Delhi CWC served a notice dated 02.01.2013 to M/s Aqdas Maritime Agency for termination of H and T contract awarded to him on 11.04.2009 for the reasons contained in that notice. The management no.1 and 2 according to the said notice terminated the contract of Aqdas and awarded a fresh contract to M/s Suman Forwarding Agency who is the respondent no.3 of this proceeding. This award was for the remaining period of the contract earlier awarded to M/s Aqdas Maritime. i. e from 03.01.2013 to 10.04.2014. The said Suman Forwarding Agency (management no.4) though continued the service of about 315 employees engaged earlier, discontinued the service of rest of the employees including the claimant. The work done by the claimant was perennial in nature and he was in continuous service of management no.1 and 2 for a pretty long period. But his service was terminated illegally and without following the procedure of Id Act by virtue of the notice dated 02.01.2013 issued by management No.1 and 2 to the management no.3. Being aggrieved the claimant raised a dispute before the conciliation officer where steps were taken for

conciliation. But the same failed for non cooperation of management No.1 and 2 and ultimately the Appropriate Government referred the dispute to this tribunal for adjudication.

The stand taken by the claimant is that he for all practical purposes was the employee of management No.1 and 2 the Ministry of Labour and Employment by its notification No. SO 1988 (E) dated 17.11.2006 has prohibited employment of contract Labour in the works of handling of import and export containers and cargo, there loading and unloading, stuffing and destuffing etc. Not only that in the 53rd meeting of the Central Advisory Contract Labour Board held on 11th and 12th March 2013 it was decided that the work mentioned above shall not be conducted through contract labours. Thus, the Principal Employer i.e. management No.1 and 2 are under the obligation to regulate the service condition of the Contract Labours. There also under the obligation to ensure that due wage are paid to the workers and all other service conditions are complied. But in this case for the inaction of management No.1 and 2 the service of the claimant was illegally terminated pursuant to termination of the contract of management no.3. Thus, the claimant has prayed that an award be passed directing the management no.4 to reinstate him in service and pay him full back wages including continuity of service and all other benefits from the date of termination. The management no.1 and 2 be directed to secure a reinstatement of the claimant by the management no.4.

Being noticed the management No.1 and 2 appeared and filed written statement refuting the stand of the claimant. It has been stated that the warehousing corporation is not a permanent establishment but operating the inland container depot at Patparganj Delhi on the licence being granted by the custom authorities. The said licence does not confer any right on CWC to permanently continue with its work and engage employees. Due to introduction of mechanization, the business of CWC has diminished remarkably and the business is fluctuating having no fix volume. The claimant was never appointed by the management no.1 and 2. He might be an employee of the contractor entrusted with the work of loading and unloading. The service of the claimant was coterminous with the contract of the contractor. There being no employer and employee relationship, the allegation of illegal termination or compliance of the provision of section 25F of the Id Act is baseless and not tenable. The other management did not appear and were proceeded exparte.

On the rival pleading the following issues were framed for adjudication.

ISSUES

1. Whether termination of workman/claimant w.e.f 03.01.2013 by management no.4 without making payment of legitimate dues is just fair and legal? If so its effect?
2. Whether employer and employee relationship exists between the claimant and the management no.1 and 2? If so its effects?
3. Whether management no.1 and 2 are liable to secure continuance of claimant on termination of contract of management no.3? if so its effect?
4. Whether claimant has locus to raise the claim against the management no.4? If so its effect?
5. To what relief the workman/claimant is entitled ?

Before commencement of the hearing and recording of the evidence the claimant filed an application calling for record from different offices. Except the Regional Labour Commissioner no other documents were produced by the offices so directed, and the claimant was given liberty of adducing secondary evidence.

When the claimant was called upon to adduce evidence he felt to do so and at last the evidence for the claimant was closed. Thereafter the management filed the evidence of one of its witness but the said witness could not be cross examined for the non appearance of the claimant. The witness examined on behalf of the management is the AGM of the establishment who has stated that the claimant was not their employee and might have been employed through the contractor. Alongwith his affidavit he filed documents marked in a series of MW1/1 to MW1/4. These documents include the internal correspondence of the department, the certificate of the registration and the licence granted to the management. With this evidence the management has stated that the claimant was neither employed by the management no.1 and 2 nor his service was illegally terminated by them. This evidence of the management witness has remained uncontroverted as non appeared on behalf of the claimant to cross examine the witness.

Hence, in view of the pleadings and the evidence are available on record it is held that the service of the claimant was never terminated by management no.1 and 2 and there exists no employer and employee relationship between them. It is also held that the management no.1 and 2 are not under any kind of obligation to secure the continuance of service of the claimant under the contractor respondent no.4. Similarly there is no evidence at all to hold that the termination of the claimant by the management no.4 was made without making payment of his legitimate dues. Hence, ordered.

ORDER

The claim petition be and the same is dismissed on contest against management No.1 and 2 and ex parte against management No. 3 and 4. The reference is accordingly answered. 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.
25th March, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
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