

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-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 190/2019
Date of Passing Award- 25th May,2023

Between:

Sh. Sunil Kumar, S/o Sh. Pratap Singh,
R/o-170, Baujha Shibbanpura, Ghaziabad,
Uttar Pradesh-201001.

Workman

Versus

1. The Chief Engineer Commissioner of Income Tax-8,
Income Tax Department,
Room No.403,27th Floor, E-2 Block
Civic Centre, New Delhi-110001.

2. Alankit Ltd.
CCIT-8, Room No. 403, B-Block,
Civic Centre, New Delhi-110002.

Managements.

Appearances:-

Sh. Arvind Kumar, Ld. A/R for the claimant
None for the management

A W A R D

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As per the claim statement, the claimant was employed as a peon in the establishment of the respondent No 1 i.e. Income Tax

Dept through the management No 2, since 01.04.2015 and his last drawn wage was Rs14,200/-per month. Though he was discharging his duty with all sincerity, without giving any scope of complaint, the managements were not granting him his legitimate and legal dues. At the time of employment no letter of appointment was issued. In spite of repeated demand the managements were not paying him the minimum wage, bonus, over time allowance, leave etc. he was not even supplied the duty attendance card and pay slip. The repeated verbal request made by the claimant in this regard remained unheeded. On the contrary, being aggrieved by his legal demands, the managements on 19.03.2018, illegally terminated his service. At the time of termination, the provisions of ID Act were not followed as no notice of termination, notice pay or termination compensation was paid, though the claimant had worked continuously in the establishment of the Respondent No 1 for more than 240 days in the calendar year preceding to the date of his termination. Being aggrieved, he approached the union and through the union, raised an industrial dispute before the labour commissioner cum conciliation officer (central) New Delhi. Before that, on 24.10.2018, he had also served a demand notice on the management requesting re- instatement in to service and release of his un paid wages for the period 01.03.2018 to 19.03.2018. But the management did not give reply to the same. The attempt for conciliation failed for the non co operation of the managements. It has also been stated that he was working for the respondent No 1 under it's supervision and control. But to defeat his legal rights, the respondent No 1 had shown him as if employed through the contractor. In fact the Respondent No 1 has changed many contractors during the period of employment of the claimant. But his status was never changed or discontinued. Hence in this petition filed u/s 2A of the ID Act, the claimant has prayed for an award directing the managements to re instate him in to service with back wages, unpaid duty pay and all other consequential benefits.

When noticed, the Management No 1 i.e. the Dept of Income Tax appeared and filed written statement denying all the stand taken by the claimant. It has been pleaded that the Respondent No 1 had awarded a valid contract to the Respondent No2 of this proceeding for supply of Data Entry Operators and Peons (MTS) for the period 01.01.2018 to 31.12.2018. vide work order dt 28.12.2016. according to the terms of the contract the persons to be engaged by the contractor will be the employees of the contractor

and they will have no claim whatsoever against the Income Tax Department. This claimant was engaged by the service provider/contractor for work at the office of the Respondent No 1. But on many occasions, it was noticed by the Respondent No1 that the claimant was not performing his duties up to the expectation of the Respondent No 1. On the contrary, he was misbehaving the female employees of the Respondent No 1. Not only that, he was also found involved in a mischievous act, when the office car of one Income Tax Officer was found severely damaged. Thus the service provider was informed about the unsatisfactory performance of the claimant. Thereafter the claimant was found absconding from his duty w.e.f. 19.03.2018. His service was never terminated by Respondent No1 nor his duty pay was withheld. Hence the Respondent No 1 has prayed for dismissal of the claim raised against the Income Tax Department.

The Respondent No 2, on service of the notice, appeared and filed WS stating that the claimant though deployed for work by him, the Respondent No 1 is his employer as he was working under the direct supervision and control of the said management who is the principal employer in this case. Moreover, the claimant at his own wish had abandoned his duties without giving any prior intimation and never came back to resume his duties. Thus his service was never terminated by Respondent No 2. It has also been stated that the Respondent No 1 was making payment for the persons employed in its office and in turn, the Respondent No 2 was making payment to the persons so employed including all statutory benefits. Hence the claim of illegal termination as advanced by the claimant is baseless and liable to be rejected.

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

ISSUES

- 1-Whether the proceeding is maintainable?
- 2-Whether there exists employer and employee relationship between the Management No.1 and the claimant.
- 3- Whether the claimant was under the employment of Management No 2.
- 4-Whether the service of the claimant was illegally terminated by the managements.

5- To what relief the claimant is entitled to.

The claimant testified as WW1 and produced several documents marked in the series of WW1/1 to WW1/11. These documents include the duty assignment order issued by Management No 1 in respect of the claimants and other persons employed by Management No2, the attendance sheet for different months maintained by different contractors engaged by the Mgt No 1, the wage payment sheets for different months, the documents relating to statutory contribution made by the employer for the claimant etc. the claimant has also filed the photo copies of the ID Cards issued from time to time by the employer. In his oral testimony the claimant has stated that he was working continuously in the establishment of the Mgt No 1 under it's supervision and control and the introduction of the contractors was only intended to defeat his legal rights. Though the contractors were changed on intervals, he continued to work without break until his service was terminated illegally.

This evidence of the claimant has been left unchallenged for the reason that none of the managements opted to cross examine him. But the documents filed by the claimant clearly show that he was employed by the contractors who were giving him salary and making deposit of his contribution with the EPF&ESI organizations. The salary slip and the ID cards were also issued to him by the contractor i.e. Mgt No 2. The documents no where reflect the name of Mgt No 1 as the employer. There is absolutely no evidence to believe that the claimant was working under the supervision and control of the Mgt No 1.

It is the stand taken by the managements that the claimant's service was never terminated but he had voluntarily abandoned the employment and thus the necessity of termination notice, notice pay or compensation ever arose. This aspect has not been proved by the management. On the contrary the claimant has adduced oral evidence to prove that his service was terminated without complying the provisions of ID Act and the same stands un rebutted and unchallenged. But for the stand taken in the WS with regard to the unsatisfactory performance of the claimant it is evidently clear that the relationship of the claimant with his employers is not harmonious and the circumstances do not justify reinstatement. Justice would be served by directing the

management to compensate the claimant for the illegal termination. Hence ordered.

ORDER

The claim is allowed on contest against Mgt No 2 and dismissed against Mgt No 1. The management no 2 is directed to pay the earned wage of the claimant @14200/- per month for the period of 01.03.2018 to 19.03.2018 and an amount of Rs50,000/- as litigation expenses and a further amount of Rs20,000 /- as termination compensation. This amount shall be paid to the claimant within one month from the date of publication of award without interest failing which the amount shall be payable with interest @6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
25th May, 2023.

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