

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM –
LABOUR COURT NO. II, NEW DELHI**

LCA No. 39/2018

Sh. Vishwa Mohan Das Vs. M/s HDFC Bank and ors.

Counsels:

For Applicant/ Claimant:

Sh. S.P. Dubey, Ld. AR for claimant.

For Managements/ Respondents:

Sh. Suryansh, Ld. AR for M/s HDFC Bank.

None for M/s Genx/ Akiko Services.

Order dated: 16.07.2024

1. This is an application U/s 33 (C) (2) of ID act,1947 filed by the claimant against M/s Genx/ Akiko Services and M/s H.D.F.C. Bank claiming that he has worked with respondent-2 through respondent-1 at M/s HDFC Bank Ltd. from September 2015 to September 2016 as marketing executive. Both the managements did not pay the earned wages of the workman from April 2016 to September 2016 (7 months) amounting to Rs. 78,000/- at the rate of Rs. 13,000/- per month. He had lodged the complaint before Assistant Labor Commissioner, New Delhi. The whole proceeding was conducted. The employers gave their replies denying employment and payment. Conciliation Officer lastly observed that he is not authorized to see the claim under payment of wages act, 1947 as suggested by order dated 12.03.2018 to file the claim before the competent authority of Delhi state; as such he had filed the claim.

2. Both the respondents had appeared and filed their written statements. On behalf of management-1 i.e. HDFC Bank, it was stated that no relationship of employer-employee existed between the workman and management. Present dispute is related with two individual parties and cannot be termed as Industrial dispute as defined in Industrial Dispute Act, 1947. It is the stand of management-1 that he had engaged the services of management-2 i.e. M/s Akiko services for deputing man powers at its various branches vide service agreement dated 21.06.2016. Management-2 verified vide its letter 27.09.2017 that the workman was never employed with management-2 since the inception of the company; he submits that claim is liable to be dismissed. Management-2 M/s Akiko services submitted that it was incorporated in September 2016. He had denied that M/s Akiko services had changed its name from M/s Genx. There is no question arises employing the workman from April, 2016 to September 2016. He also submits that claim of workman be dismissed.

3. From the pleadings of the party, following issues had been framed vide order dated 05.07.2019.

1. Whether the proceeding is maintainable.
2. Whether the management has withheld the differential salary of the claimant amounting to Rs. 78,000/- (for seven months) w.e.f. April 2016 to September 2016.
3. To what other relief the workman is entitled to.

4. Both workman and management-1 had examined one witness each in order to buttress their claim and rebuttal. Workman had reiterated the facts as mentioned by him in the claim statement and relied upon three documents i.e. order dated 12.03.2018 passed by the conciliation officer advising him to file the claim before competent authority, Identity Card issued by M/s Genx EX. WW1/2, monthly file record of HDFC credit card of seven pages which was issued to him from February 2016 to august 2016 EX. WW1/3.

5. Workman witness had been examined by management-1 where he admitted that he had joined the Genx in September 2015 as sales executive. No appointment letter but one identity card was issued to him by M/s Genx. From September 2016, name of M/s Genx was changed to M/s Akiko services; however, he was not getting any commission for selling the cards but monthly salary only. Mr. Anwar Ali was the team leader, being the field staff he was mostly working in the field and sometimes at the Genx office. He had not made any written communication or e-mail in this regard. Each time the officials of M/s Genx were delaying the payment on one pretext or another.

6. In rebuttal, management had relied upon the documents i.e. copy of power of attorney dated 03.01.2017 EX. MW1/1, copy of Board resolution dated 16.04.2022 EX. MW1/2 and copy of service agreement dated 21.06.2016 EX. MW1/3. Witness admitted that he was working with the HDFC bank for one year. He knows workman was working at ATM of HDFC bank through the contractor management-2 with whom HDFC bank has a contract of supplying the man power. He cannot say if amount of Rs. 78,000/- per month

was not paid to the claimant by management-2 toward salary from the month of April 2016 to September 2016. He cannot accept or deny whether another contractor has replaced management-2 herein.

7. Workman counsel stated that since management-2 has not brought any evidence to this effect that the salary was in fact paid to the claimant and management-1 had admitted that the claimant was working at the ATM therefore he has proved the fact that he has not been paid the salary by management-2 i.e. Akiko services.

8. On the other hand, management-1 submitted that he has no relationship of employer-employee, therefore there is no question arises for making the payment.

9. I have heard the argument at bar and perused the record. Claim petition has been filed by the claimant U/s 33 (C) (2) of ID act. Section 33 (C) (2) empowered this tribunal to decide the entitlement of the workman for receiving from the employer any money or any benefit which is capable of being computed in terms of money. However, sub-section 2 of section 33 (C) is subject to clause 1, money shall be due to a workman under a settlement or an award or under the provision of chapter V (A) or chapter V (B) of the Act. But here is no settlement or award has been passed by any tribunal upon which any money is due upon the employer. The workman should have approached to this tribunal for his illegal termination only then an award can be passed in favour of the workman if he proves that his services were terminated illegally. The application should have been made within the parameter set out in the act, but here the same has not been done so. Ld. ALC to whom the claimant had

approached earlier had rejected his application by observing that the claimant should have approached the appropriate authority on recovery of payment of wages. Rather than to approach the authority under payment of wages act, he had filed this claim before this tribunal which he cannot.

Order

In view of the above discussion in hand, the application under section 33 (C) (2) is not maintainable. Hence, the same is dismissed. File is consigned to record room.

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II