

**BEFORE SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL
GOVT. INDUSTRIAL-CUM-LABOUR COURT NO-II, NEW DELHI**

I.D. No.228/2021

Sh. Samare Alam, S/o Sh. Vasi Alam,
R/o 976, J.J. Colony, Block –D, Bawana, Delhi–110039.

I.D. No.229/2021

Md. Israil, S/o Sh. Abdul Barik,
R/o 1019, J.J. Colony, Block –D, Bawana, Delhi–110039

I.D. No.230/2021

Sh. Niyaz Ahmed, S/o Sh. Matin Ahmed,
R/o E–2944, J.J. Colony, Block –D, Bawana,
Delhi–110039.

VERSUS

1. The General Manager,

B.G.K. Shirke Construction Technology Pvt. Ltd.,
H.O. G–09/1333, DDA Flat, Narela, New Delhi–110040.

2. B.G. Shirke (Construction Technology Pvt. Ltd.),

Regd. Off. & Factory: 72-76, Mudwa, Pune–411036.

AWARD

By this composite order, I shall dispose off the claims of the above said workmen U/S 2A of the I.D Act. Claimants have stated in their statement that they have been working with the management on 01.02.2013, 13.01.2013 and 22.03.2013 at the post of masons at the last drawn salary of Rs. 10,000 per month. Since beginning they did their work with honesty and sincerity and did not give any chance to the managements for complaining. Management took the work from 8AM to 8 PM and had not been providing the legal facilities to them i.e. minimum pay, appointment letter, bonus, ESI etc. Management had

obtained their signature on blank paper while they were in service. Management had paid last their salary on March in April 2020 and thereafter, had not paid the salary despite being asked for that. Ultimately their services have been terminated on 30.07.2020. They have exhausted all the legal remedy i.e. sending demand notice, moving the conciliation officer but no result had been yielded. Hence, they filed the present claim after conciliation become failure.

After receiving the said claim notices were issued to both the managements. Management had appeared and filed the WS. Management submits that claim is bald misrepresentation. Claim is liable to be dismissed in limine as the claimant has not come forward with clean hand. He submits that the claimants have been employed through contractor. Suddenly the lock down was imposed and construction activity had been stopped. Therefore, he is not liable to pay anything.

Rejoinder has also been filed by the claimant rebutting the plea of the management.

Issues have been framed in the present cases.

During the course of proceedings when the matter has come up for workmen evidence, this tribunal had asked the claimant AR how this tribunal's jurisdiction has been invoked, while none of the party has come with the definition of Central Government. On 06.11.2023 this tribunal had called the Sh. Santosh Kumar, Assistant Commissioner Labour (Central Delhi) for explaining the fact as to why they had entertained the present claims before him and issuing the certificate of failure to the claimants because none of the respondents, is the central government which is mandatory for entertaining any Industrial Dispute in three other cases where the B.G.K Shirke is also the respondents. However, Sh. Santosh Kumar had not appeared despite, the notice being given to this effect. Therefore, this tribunal has taken it for disposal.

Counsel for the claimants has stated that he has appeared before this tribunal because the notices were sent by this tribunal and the conciliation had been failed and Sh. Santosh Kumar, Assistant Commissioner Labour, (Central) had issued the failure report.

Appropriate government is the central government in relation to any industrial dispute which pertained to any industry carried on by all under the authority of central government.

Section-2(a)(1) of the Act give the detail expression of covering the industry which falls under the definition of central government controlled industry. It is reproduced

'in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central

Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labor Board established under Section 5A of the Dock workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees Provident Fund and Miscellaneous provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation establish under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporations of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporation Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [[an air transport service, or a banking or an insurance company,] a mine, an oil field,] [a cantonment Board,] or a [major port, any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or any corporation, not being a

corporation referred to in this clause, established by or under any law made by parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

Ld. AR of the workman is unable to tell how this tribunal has the jurisdiction to try their claim particularly when the appropriate government is not the central government in respect of the respondent herein. Ld. AR has only stated that the Sh. Santosh Kumar, Assistant Labour Commissioner (Central) Delhi had given the failure report U/s 2 A of the Act and for this reason he had filed his claim. He further asserted that this tribunal has the jurisdiction in view of the failure report given by the Assistant Commissioner (Central).

Section-2 A have been inserted by Act 35 of 1965 in the Act and provide that the dismissal, discharge, retrenchment and termination of individual employee/workman shall be deemed to be an Industrial Dispute and give an option to the workmen to file the claim directly by filing an application to the labour court or tribunal for adjudication. However, it is subject to the condition that first, he will make an application to the conciliation officer of the appropriate government for conciliation of the dispute. However, the application has to be made before the tribunal after expiry of the Forty-five days of moving the application before the conciliation officer.

Section-2 A of the Act is reproduced herein for the sake of convenience

‘[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. [(1)] where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute]’

Section 2 A (2) which has been inserted by Act 24 of 2010 has categorically mentioned that the application has to be made to the conciliation officer of the appropriate government. However, the Assistant Commissioner (Central) Delhi is not the conciliation

officer of the appropriate government herein because none of the respondent has come within the definition of the Central Government. He has exercised the jurisdiction which has not been vested upon him.

In these circumstances, this tribunal has found that it has no jurisdiction to try the claim of the workmen. Hence, the claim of the workmen stand dismissed for want of jurisdiction. Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. A copy of this award is also sent to the Central Labour Commissioner for information and action. A Copy of this award is placed in each of the file. File is consigned to record room.

Date: 29.01.2024

ATUL KUMAR GARG
Presiding Officer
CGIT-Cum-Labour-Court-II