

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. 08/2011

Date of Passing Award- 27th February,2023.

Between:

The National Org. Secretary,
Indian National Trade Union Congress,
Shramik Kendra 4, Basti Veer Singh Marg,
New Delhi 110001

Claimant

Versus

1. The Director General of works, CPWD
A-Wing, Nirman Bhawan,
New Delhi-110001
2. The Executive Engineer, (Electrical) CPWD,
Electrical Division ,Safadarjang Hospital,
New Delhi-110029

Managements

Appearances:-

Shri B.K. Prasad
Shri Atul Bhardwaj

A/R for the Claimant.
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 CPWD, 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- 42011/49/2010 (IR(DU) dated 28/01/2011 to this Tribunal for adjudication to the following effect.

“Whether the action of the Management of CPWD, Electrical Division, Safdarganj Hospital, New Delhi in not regularizing the service of 64 liftmen engaged through the contractor (M/S Olympian Elevators & Engineering Co Pvt Ltd and M/S Swastik Enterprises) is justified? If not, what relief the workmen are entitled to and from which date?”

Though the reference received from the Government was enclosed with a list of 64 workmen, only 49 of them, (list appended to this award) filed the claim statement and contested the Industrial Dispute after authorizing six of them to represent all the workmen who have filed the claim statement. .

The claimants in the claim statement have stated that they had been working with the management as lift operators since the date of their respective date of initial appointment as stated in the claim petition and discharging the duty in the building of Safdarjung Hospital New Delhi. They are discharging the perennial nature of work which includes operation and maintenance of the lifts in the building, which is being executed by the Electrical Division, CPWD, Safdarganj Hospital, New Delhi. Though they are working under the effective control and supervision of the management of CPWD, the later, with a view to deprive the claimants of their lawful rights, entered in to a sham contract with M/S Swastik Enterprises and thereafter with M/S Olympian Elevator & Engineering Co Ltd, and placed the service of the workmen under the said contractors. Though the contractor was changed on interval, the service and employment of the claimants continued under the management CPWD. The work of operating and maintain the Lifts by the claimants continued without break for the change of contractor under the direct supervision of the engineers of the management CPWD. Neither the management

CPWD is Registered under the Contract Labour (Regulation & Abolition)Act, nor the contractor is having license under the said Act. The management CPWD had appointed several hundred workers against the regular quota in the Trade the workmen are working and the service of the said persons were regularized subsequently by ignoring these claimants. Presently they are working as lift operators and discharging the duty meant to be discharged by the regular employees. Their representation for regularization in service and for grant of equal pay for equal work was not paid any heed by the management. Finding no other way, they approached the labour commissioner cum conciliation officer. The conciliation since failed, the appropriate Govt referred the matter for adjudication in terms of the Reference. To support the contention made in the claim petition, the claimants have relied upon the Office Memorandum, of the Directorate General of Works, CPWD, setting out the guide lines for computation of the equal pay for equal work for implementation of the judgment of the Hon'ble SC in the case of Surender Singh and another vs EIC, CPWD. Reliance has also been placed in the case of Steel Authority of India vs National Union, Waterfront workers&others(2001) 7 SCC 1 and the case of Secretary,Haryana State Electricity Board vs Suresh and Others, (1991 LLJ-1086) to argue that the contract between the principal employer and the contractor , when found to be sham, the employees engaged by the contractor are to be treated as the employees of the principal employer. If the principal employee is found not registered under the CLR Act, the linkage between the contractor and the employee stands snapped and the employees are to be treated as the employees of the principal employer. The claimants, have thus prayed for grant of the relief sought in the claim petition.

The management CPWD, in the written statement has taken various objections including non joinder of the parties. According to the narratives in the WS the claimants were never appointed as lift operators by CPWD and there exists no employer and employee relationship between them. The building of Safdarjung

Hospital is being maintained by CPWD. To accomplish the work, CPWD engages different contractors having expertise, by proper tendering process and competitive bidding. For running and maintenance of lifts and other electro mechanical equipment, contract for specific period were awarded to contractors. As per the contract term the CPWD has no right of supervising or interfering with the work force of the contractor. The claimants were engaged initially by the contractor M/S Swastik Enterprises and then by M/S Olympian Elevator and Engineering Co Ltd. There were 41 lifts installed in S J Hospital and 85 lift operators were engaged through the contractor as lift operators. By passage of time the manually operated lifts have been changed to Automatic lifts and the requirement of lift operator no more exists .the requirement now is of rescue operation staff like lift mechanics. As far as the claim of the claimants is concerned, the CPWD has been registered under the CLR Act and tenders for executing the work requiring engagement of work force are only awarded to the contractors having license under the said Act. The over all performance of the contractor is monitored by a team of Engineers, who do not exercise control and supervision on the individual worker employed by the contractor. CPWD has no right of appointing or terminating the service of an individual worker or lift operator appointed by the contractor. No salary is directly paid to the said workers of the contractor by CPWD. Stating that the judgments relied upon by the claimants have no relevancy with the facts of this claim, the management has pleaded for rejection of the claim on merit as well as for non joinder of the contractors as the Respondents.

No issues were framed on the basis of the pleadings. But by order dt 25/10/2012, it was directed that the adjudication shall be made in terms of the reference and the parties were called upon to adduce evidence.

On behalf of the claimants, though several affidavits were filed, only one witness namely Md. Earul Hoque tendered the

affidavit to be read as his evidence and filed some documents which were exhibited as WW1/1 to WW1/5. He was cross examined by the AR for the Respondent. On behalf of the Respondent, the Executive Engineer Sh R N Singh testified as MW 1. He also proved few documents which were marked as Ext MW1/1(colly). The witness was cross examined extensively by Sh B K Prasad, the learned AR for the claimants.

At the outset of the argument, the learned AR for the claimants submitted that the management has admitted the deployment of the claimants in their Electrical Division at SJ Hospital. The witness examined by the Respondent has admitted their supervision and control over the work of the claimants. The contract between the Respondent and the contractor being sham and intended to camouflage the legal rights of the claimants, they are the employees of the Respondent and for the long years of service rendered and for the perennial nature of work discharged by them and for the notification and office memorandums issued by the Respondent, pursuant to the order passed by the Hon'ble SC in the case of Surender Singh referred supra, the claimants are entitled to the relief of regularization of service together with the relief of regular pay for regular work. To support his argument, he placed reliance in the case of Steel Authority of India vs National Union Waterfront Workers and the case of O N G C Ltd vs Petroleum and Coal Labour Union and submitted that the Labour Court or Tribunal has power to pass award compelling the corporation or establishment to regularize the service of the workman, and the stand of the establishment that the concerned workman was not appointed by following due procedure is of no consequence, when it is proved that the workman had worked for a long period continuously for the management.

In his counter argument, the learned AR for the management argued that the Executive Engineer of the Respondent was registered under section 7 CLRA during the relevant period and the contractor who was selected through a bidding process had also a

valid license for providing lift operators as per the contract. The lift operators were provided to the site of SJ Hospital for accomplishment of the work entrusted to the contractor. Hence they were the employees of the contractor. He also placed reliance in the case of Steel Authority of India, relied by the claimants.

FINDINGS

For the objections taken in the pleading by the respondent with regard to the employer employee relationship between the parties, it is necessary to examine that aspect at the first instance, which will have a determining effect on the other issues raised by the parties.

Admitted facts are that the claimants, barring few whose services were terminated during the pendency of this proceeding are working in the premises of SJ Hospital as lift operators and the maintenance of the building is in charge of the Respondent CPWD. Where as the claimants are demanding to be treated as direct employees of the Respondent and regularization, for want of registration of the respondent under CLRA and for want of license in favour of the contractor under CLRA. The Respondent has denied the same. MdEarulHoque, the representative selected by the workmen to depose has stated that they are working for a long time in SJ Hospital under the supervision and control of the Engineers of the Respondent and the contractors have been introduced by virtue of some sham contracts and their services have been placed under the said contractor with the sole objective of defeating the rights of the claimants. He has also stated that the so called contractor has no license of engaging the contract labour. Except the oral evidence, no other evidence has been placed to make the Tribunal believe that the contract was sham, the contractor has no license or they are working under the supervision and control of the Respondent CPWD. The documents filed and proved by the claimants through the witness no way proves the said aspect, as the documents are with regard to the claim advanced before the labour

commissioner and the agreement entered between the Union and CPWD to consult the union before engaging any contractor.

On the other hand the witness examined by the Respondent is it's Executive Engineer and he stated that the Respondent has been duly registered under sec 7 of the CLRA and the contractors engaged possess valid license for engaging contract labour. He also proved the certificate of Registration in favour of the Respondent and the license granted to the contractors who were engaged for the work lift operation as Ext MW1/1(colly) the agreement entered between the Respondent and the contractors has also been placed on record as Exhibits. The oral evidence of the witness and the documents filed stands uncontroverted as no contrary evidence has been adduced by the claimants.

The claimants though claiming to be directly employed by CPWD and further claiming the contract between the contractor and CPWD to be sham, no evidence has been adduced at all to prove the claim. The contractors were not made parties, even if it is claimed to be a sham contract. Had the contractors been added as parties, light could have been thrown on this aspect. On the other hand the Respondent has placed documents on record to prove that the contractor having valid license under CLARA was selected through a proper bidding. Documents to that effect have been filed as MW 1/1 (colly). The witness of the Respondent MW1, during cross examination has stated that he is not in a position to state if the claimants are working as lift operators in SJ Hospital or any payment made to them by the contractor, since as per the terms of the contract, the contractor supplies man power for operation of lifts and makes payment to them. The witness denied to the suggestion that these workmen are working for the Respondent much prior to the registration of the contractors under CLRA, which suggests that they are the persons directly employed by the Respondent.

The claimants have not placed on record any document in support of their stand that during the relevant period they were under the employment of the Respondent CPWD. In such a situation, the claim is to be examined from the other circumstances i.e the effective control test as has been observed in several pronouncements by the Hon'ble Apex Court including the case of **Steel Authority Of India VS National Union Waterfront Workers Union, reported in (2001) 7 SCC,1**. In the case of **Workmen of Food Corporation of India VS Food Corporation of India, AIR 1985(SC) 670**, the Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. When the same is proved from the evidence, relationship of employer and employee is established. In this case neither oral nor documentary evidence has been adduced by the claimants to prove the manner in which the Respondent CPWD is exercising effective control and supervision on the work done by them.

Admittedly the claimants were not issued the letter of appointment, employee ID or salary slip by the Respondent, which is ordinarily issued to an employee. In such a situation the workmen are required to adduce other evidence suggesting employer employee relationship. **The hon'ble SC in the case of Ram Singh vs Union Territory, Chandigarah(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 **BalwantRaiSalujavs 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, 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. They have not examined any witness except only one of the claimants to prove their relationship with the management. No documentary evidence has been placed on record to show that the claimant workmen were getting their salary/remuneration from the Management. The documents filed by them are nothing but some written representation to the Labour commissioner and one agreement where in the Respondent had agreed to consult the labour union before awarding contract to the contractors. But these documents no way prove that the claimants were getting salary as claimed by them from the Management. The oral and documentary evidence adduced by the claimants no way proves that they were working under the supervision and control of the Respondent.

Reliance has been placed by both the parties in the case of Steel Authority of India vs National Union Waterfront, referred supra. In the said case, the Hon'ble SC while examining the relationship of Principal Employer and Contract Labour, have held that

“where a workman is hired through a contractor, held, master and servant relationship exists. But where a workman is hired in or in connection with the work of an establishment to produce a given result, or the contractor

supplies the workmen for any work of the establishment, unless the contractor is a mere camouflage, the workman can not be treated as an employee of the principal employer.”

In this case the claimants have not proved except saying in the claim statement that the contract between the Respondent is sham and intended to camouflage the rights of the workers. On the contrary, the Respondent has adduced documentary evidence to prove that the contract was awarded to the eligible and registered contractors through a competitive bidding. More over the presence of the two contractors are admitted by the claimants. The evidence on record proves that the contract was awarded to the contractors to operate the lifts of SJ Hospital Building in respect of which the Respondent is responsible to manage and maintain. To accomplish the work awarded through the contract, the contractor had supplied the workforce of which the claimants are a part. Thus they can not be held as the employees of the Respondent CPWD. The claimants have not made the contractors party to this proceeding. Had they been added, some light would have been thrown on the dispute relating to the employer and employee relationship between the claimants and the Respondent CPWD. The claim also suffers from non joinder of necessary parties. The evidence adduced by the claimants do not fulfill the test suggesting that they are the employees of the Respondent. Hence the Respondent can not be directed to regularize their service in CPWD.

Though the reference has been received to adjudicate upon the claim of regularization, in the claim statement a prayer has been made for grant of equal pay for equal work and the remuneration be paid at par with the daily rated workers regularized by the Respondent. No evidence to substantiate the said claim has been adduced. More over the Tribunal, while adjudicating the dispute, can not travel beyond

the Reference received. Hence no order can be passed in this regard. Hence ordered.

ORDER

The reference be and the same is answered against the claimants. It is held that the claimants not being the employees of the Respondent CPWD, the later can not be directed to regularize their services. No order can also be passed directing the Respondent to pay equal remuneration to the claimants for equal work at par with the remuneration paid to the daily rated workers, whose services has been regularized.

This order is passed in respect of the claimants contesting the proceeding and as per the list Annexed. The award is accordingly passed.

LIST OF WORKMEN

Sr. No.	Name & Father/husband's Name	Date of joining/year of joining	Designation
1.	Md. Earul Haque S/o Late Moh. Woarash Sheikh	1992	Lift Operator
2.	Manjeet Singh Rawat, S/o Late Sh. Kushal Singh	09.05.1996	Lift Operator
3.	Ashok Kumar, S/o Sh. Ram Ashray	27.09.1990	Lift Operator
4.	Sh. Hari Mohan S/o Sh. Niranjan Singh	01.03.2007	Lift Operator

5.	Sh. Tarkeshwar Sah, S/o Chanderma Sah	12.06.1998	Lift Operator
6.	Sh. Satish Kumar S/o Late Sh. Balkishan	21.02.2001	Lift Operator
7.	Sh. Amit Singh, S/o Late Sh. Avtar Singh	23.07.2003	Lift Operator
8.	Sh. Sunil Kate S/o Sh. Ram Chander Kate	07.02.2003	Lift Operator
9.	Sh. Saheb Dutta S/o Sh. Prutal Dutta Prasad	23.07.2006	Lift Operator
10.	Sh. Vijay Kumar S/o Late Sh. Jawala Prasad	02.02.2002	Lift Operator
11.	Sh. Surinder Singh, S/o Late Arjun Singh	25.05.1995	Lift Operator
12.	Sh. Shiv Charan S/o Shambhu Prasad	07.11.2003	Lift Operator
13.	Sh. Ved Prakash S/o Late Sh. Sita Ram	04.09.1994	Lift Operator
14.	Sh. Tej Ram S/o Sh. Kaniyalal	10.11.2002	Lift Operator
15.	Sh. Sunder Singh S/o Sh. Gyan Chand	04.09.1994	Lift Operator
16.	Sh. Joginder Singh S/o Sh. Bhoop Singh	28.11.1996	Lift Operator
17.	Sh. Girish Kumar S/o Sh. Governor Singh	06.07.1996	Lift Operator
18.	Sh. Ganga Prasad S/o Sh. Khem Chand	16.01.1996	Lift Operator

19.	Sh. Chandvir Sharma S/o Sh. Ganga Dhar Sharma	14.02.1997	Lift Operator
20.	Sh. Akash Gupta, S/o Late Sh. Arun Kumar Gupta	27.09.2001	Lift Operator
21.	Sh. Saroj S/o Sh. Nand Lal	10.04.2004	Lift Operator
22.	Sh. Ajay Kumar S/o Tej Ram	07.04.2001	Lift Operator
23.	Sh. Arun Kumar S/o late Sh. Naresh Kumar	02.03.2005	Lift Operator
24.	Sh. Mohan Shyam S/o Late Sh. Niranjan Singh	20.01.2003	Lift Operator
25..	Sh. Chandan Kumar S/o Late Sh. Ram Briksh Ram	08.12.2007	Lift Operator

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.
27rd Feb, 2023

Presiding Officer.
CGIT-cum-Labour Court.
27rd Feb, 2023