

Id No. 53/2012

17.05.2022

Present:-

Shri Vijay Pal, Ld. A/R for the claimant alongwith claimant.
Shri B. S. Rana, Ld. A/R for the management No.1.

This order deals with an application filed by the claimant seeking a direction in the nature of interim relief to the management to disburse his last drawn monthly wage till the disposal of the present ID and the direction for disbursement of arrear wage from the date of his illegal termination and till the realisation of the same is made.

The averment of the workman in the petition is that he was working as a sweeper on daily wage basis since October 2004 in the establishment of management No.1 i.e. National Insurance Company and continuing as such without break till 17.11.2008 when the management entered into a contract with M/s Ex servicemen security Agency Dehradun to provide Manpower for their office. As such the claimant's service was placed under the contractor w.e.f 17.11.2008. Being aggrieved he raised a claim for regularization and the conciliation was going on before the Labour commissioner and the management appeared and admitted the initial engagement of the claimant by them and subsequent engagement through the contractor. The conciliation since failed the appropriate government referred the matter to this tribunal for adjudication of his claim for regularization. While the matter stood thus the contractor terminated the service of the workman w.e.f 01/11/2019 without considering that an industrial dispute is pending. Thus, a separate petition has been filed u/s 33A of the Id Act. But in this petition he has prayed for an interim relief in the forum of wage and arrear wage to be paid by the management.

The management National Insurance Company appeared and filed objection on the ground that the claimant is not an employee of management no.1 but the employee of the contractor management no.2. Hence, no direction for interim relief should be given to the management no.1.

Management no.2 did not file any objection nor participated in the hearing of the petition.

Perusal of the record shows that initially the reference was made by the appropriate government adding national insurance company i.e. management no.1 as a party. Subsequently on application filed by the claimant for impleadment of the contractor as a respondent by order dated 18.07.2019 this tribunal added M/s Ex serviceman Security Agency as management no.2. On the next date the said management no.2 appeared through its counsel. But no reply to the claim statement was ever filed. Thereafter the claimant filed the present petition for interim relief and copy of the same was supplied to the management no.2. But the management no.2 has not filed any reply nor contested the petition.

Prima facie the relationship between the claimant and the management no.1 is not evident on record as the claimant has stated in the petition that he is working under the contractor i.e. management no.2 since, 17.11.2008. He has also stated in the petition that the management no.2 has terminated his service w.e.f 01.11.2019 when the industrial dispute was pending and without taking prior approval of the tribunal. A separate petition u/s 33A has been filed. In view of the situation and since the Hon'ble Supreme Court in the case of **Jaipur Zila Shekhari Bhoomi Vikas Bank Vs. Ram Gopal Sharma and others reported in (2000) 2 SCC page 244** have held that when for removal during the pendency of a dispute approval is not granted, the same is wholly invalid. The Judgment of the Apex Court relied by the workmen has been passed by a five judge bench of Hon'ble Supreme Court wherein the object behind enacting section 33 of the Id Act after the amendment has been discussed and in Para 6 of the judgment it has been observed that section 33 was amended in 1956 permitting the employer to make changes in the service, or to discharge or dismiss an employee in relation to matters not connected with the pending industrial disputes. At the same time the amendment provides safeguard for a workman who may be discharged or dismissed. In the said judgment the Hon'ble Apex Court have further held that when no application is made u/s 33 (2)(b) seeking approval, it is a clear case of contravention of the said provision. In the instant case admittedly no permission or approval was sought by the employer in terms of section 33(2)(b).

Admittedly, there is no distinct provision under the ID Act for grant of interim relief during pendency of the proceeding. But, considering the circumstances of an individual case, the relief of interim relief can be granted as incidental to the dispute pending for adjudication as has been held in the case of **Hotel Imperial vs. Hotel Workers Union, reported in 1959LLJ(II) 554** and several subsequent judgments of the Hon'ble Courts. Further, in this case of **Jaipur Zila Shekhari Bhoomi Vikas Bank Limited vs. Ram Gopal Sharma (2002)2SCC, 244**, the Hon'ble Supreme Court have clearly held that when during the pendency of an industrial dispute, the

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service condition is changed without approval of the tribunal, it will be deemed that the order of dismissal was never passed.

The Ld. A/R for management No.1 argued that in view of the objection taken in the WS there is no privity of the contract between the claimant and the management No.1 and this is a vital point to be adjudicated in this proceeding and until a finding is arrived at on this issue, no finding can be given by any adhoc adjudication of the application for interim relief. He summed up his argument saying that the tribunal has to give a finding first about the employer and employee relationship before shaddling any responsibility on the management no.1 for wage as interim relief.

In this case the claimant though had initially advanced the claim against management no.1, subsequently admitted that he was working under the contractor before the alleged termination of his service. Hence, while allowing the petition filed by the claimant for interim relief it is held that the management no.2 who had appeared in this proceeding on 06.09.2019 having knowledge about the pendency of the industrial dispute terminated the service of the workman w.e.f 01.11.2019 in gross violation of the provisions of section 33 of the Id Act. In view of the observation of the Hon'ble Supreme Court in the case of **Jaipur Zila Sehkar Bhoomi** referred supra, the act of termination in violation of section 33 is to be treated as nonest. Hence, the management no.2 shall pay 40% of the last drawn wage to the claimant as an interim measure from the date of his alleged illegal termination during the pendency of the industrial dispute i.e. from 01/11/2019 until further orders. The management no.2 is further directed to pay the 40% of the wage as directed above within 10th day of each calendar month to the claimant until further orders or disposal of the industrial dispute. The management no.2 shall pay the arrear of the wage at the rate indicated above from 01.11.2009 to the actual date of payment within 2 months hence failing which the amount shall carry interest @ 9% per annum. Call the matter on 22.12.22 for management evidence.

Manoj Kumar
Presiding Officer

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