

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. 145/2015

Date of Passing Award- 15.02.2022.

Between:

Shri Sanjiv Kumar, Motor Lorry Driver,
S/o Shri Satpal Singh, Claimant
C/o All India CPWD (MRM) Karamchari Sangathan,
H. No. 4823, Gali No.13, Balbir Nagar Extn.,
Shahdara,
New Dehi-110032

Versus

The Executive Engineer,
CPWD, Dehradun Civil Division-I,
Subhash Road,
Dehradun-248001 Management

Appearances:-

Shri Satish Kumar Sharma For the claimant.
(A/R)
Shri Atul Bhardwaj For the Management
(A/R)

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 M/s CPWD, Dehradun Civil Division-I 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-42012/77/2015 (IR(DU) dated 28/10/2015 to this tribunal for adjudication to the following effect.

“Whether the action of the management of CPWD, Dehradun over the matter of alleged illegal termination of Shri Sanjiv Kumar from services w.e.f 22.12.2010 is legal and justified? If not, what relief the workman is entitled to and from which date?”

The contention of the claimant is that he was appointed by the management CPWD as a Motor Lorry Driver w.e.f 28.02.1992 through a contractor and was deputed for running and maintenance of the vehicle under direct control of the Executive Engineer, Dehradun Central Division-I

of CPWD. He was performing his duty for more than 8hrs a day to the utmost satisfaction of the employer. But he was never paid the salary paid to the regular drivers though the nature of the work discharge by him was equal of that of the regular employees and the payment made to him was not even in accordance with the notification under the minimum wages Act. The management CPWD in order to deprive the claimant of his legitimate right and to camouflage his relationship as the employee of the employer CPWD had introduced contractors through whom the claimant was getting his remuneration. Though the contractors were changing hands the claimant workman was a continuing to work uninterruptedly. In the process he had completed work for more than 240 days in a calendar year including the year preceding to the date of his termination of service on 22.12.2010. On that day the management without serving any notice of termination, termination compensation or pay in lieu of notice illegally terminated his service in violation of the provisions of section 25F of the ID Act. Even the contractor never served a notice of termination on the claimant before the said termination. There are regular sanctioned posts of motor lorry drivers in the establishment of the management. But the claim of the claimant for regularization against the said vacant sanctioned post in view of his long standing service was never considered by the management. The demand made by the claimant through the union for regularization of the service and payment of legitimate dues were not considered but he was terminated from service by the management. Since the date of termination the claimant has remained unemployed and doesn't have any other source of income. He thus, raised a dispute before the labour commissioner seeking redressal but no fruitful result could be achieved during conciliation and the appropriate government referred the matter to this tribunal for adjudication. In this claim petition the claimant has prayed for an award to be passed directing the management for his reinstatement in service w.e.f. 22.12.2010 and payment of full back wages alongwith all consequential benefit from the date of termination and till the date of reinstatement. He has also prayed for a direction to the management to regularize his service against the post of motor lorry driver.

Being noticed the management appeared and filed Written stating refuting the allegation of the workman. The specific plea of the management is that the claimant was never the employee and there never existed any employer and employee relationship between CPWD and claimant. The management CPWD is authorized to float tenders calling upon the contractors to provide manpower to engagement as drivers against the vehicles owned by the department and used by its officials. In the process the lowest bidder is awarded the contract for a specific period. The said contractor provides manpower to be engaged as contractor and the claimant was one such driver engaged through the contractor. The bills raised by the contractor are paid in accordance to the work done. Like any other driver they said driver engaged through the contractor maintains the log book for the vehicle and maintains the vehicle including the repair. The claimant was

one of the drivers engaged through contractor and except driving the vehicle he was under the control of the said contractor only. Mere maintenance of the log book or getting a gate pass for entry into the premises of CPWD or the sites where CPWD has ongoing projects shall not confer any status on the said manpower provided by the contractor as the employee of the CPWD. It has also been stated by the management that this claimant was never the employee of the CPWD and later was not exercising supervision and control over him except for the purpose of driving in which case the officials using the vehicle driven by him gives him direction. While denying the claim that official accommodation was provided to the claimant, the management has stated that as per his own documents he was residing in the servant quarter attached to the government accommodation of the engineers. The gate pass was granted to him wherein he has been described as a contractual driver to facilitate his entry into the base camp of ARC Sarsawa, the campus of special frontier force to which entry of outsiders is completely prohibited. The claimant since was never employed by the management the question of his illegal termination doesn't arise. It is the contractor who had engaged him and the said contractor since stopped his engagement the claimant was called upon to handover the log book and key of the vehicle on 22.12.2010. It is the further stand of the management that the CPWD being a government department of India cannot employ a person without following due procedure. As per the own statement of the claimant he was employed through the contractor and no employment order was handed over to him by CPWD. Hence, the claim advanced is not maintainable and liable to be dismissed. On the rival pleading the following issues are framed for adjudication.

ISSUES

1. Whether there exists employee and employer relationship between the workman and the management if so its effect?
2. Whether the action of management CPWD Dehradun over the matter of alleged illegal termination of the claimant w.e.f 22.12.2010 is legal and justified if so its effect?
3. To what relief the workman is entitled to and from which date.

The claimant examined himself as WW1 and produced some documents which have been marked in a series of WW1/1 to WW1/7. These documents include some certificates issued by the Engineers of CPWD acknowledging that the claimant is an employee of CPWD, the ID cards Gate pass issued to the claimant, various representation made by the claimant demanding equal pay for equal work and reinstatement into service, the authorization given to the claimant for servicing of the vehicle. During the pendency of the proceeding the claimant had filed an application u/s 11(3) of the ID Act for production of documents which was allowed and the management produced photocopies of the log book maintained. On behalf of the management one of its engineers testified as MW1 and proved the photocopies of the log books as MW1/1.

During course of argument the Ld. A/R for the management submitted that the basis of the claim advanced by the claimant rests upon the employer and employee relationship of the parties. The burden always lies on the claimant to establish the same. In the instant case the claimant has miserably failed to establish the said relationship. Unless the same is established, it cannot be held that the service of the claimant was illegally terminated and he is entitled to the relief of reinstatement with back wages. The Ld. A/R for the claimant counter argued that the claimant is the mighty employer and in possession of all the documents which could have thrown light on the challenged employer employee relationship. Since the management failed to produce the documents an adverse inference is bound to be drawn against the management. It is pertinent to mention that the claimant had asked for production of the log book only and the said log books have been produced by the management. Hence, the management cannot be held liable for suppression of material documents.

FINDINGS

ISSUE No.1 & 2

These are the most important issue for adjudication in this proceeding. In order to decide whether the service of the workman was terminated illegally by the management, it is to be decided at the first instance if the workman was working as the Motor Lorry Driver for a period of 18 years and there exists an employer employee relationship between them. The workman has pleaded and laid evidence that he was working as Motor Lorry Driver and attending the works assigned to him by the officials of the management. He has specified the nature of the duty discharged by him. To support the same he has filed photocopies of several certificates issued to him and the authorization granted for repair and maintenance of the vehicle he was driving. The management took a stand that the workman had never worked in the capacity of the Motor Lorry Driver of the department. From the evidence adduced by both the parties the admitted facts are that no appointment letter or termination letter was issued to the workman by the management. Thus, from the evidence on facts, it is to be ascertained if at all the workman was working as a Motor Lorry Driver of the management. The workman as WW1 has fully supported the averments of the claim statement and added that from 23.02.1992 and till 22.12.2010 he was working for almost 18 years as a Motor Lorry Driver. During this period he was discharging the duty as a Motor Lorry Driver and even travelling outstation for official duty including election duty. Not only that he was being assigned the responsible work like repair of vehicle, filling of fuel etc. During cross examination the claimant has admitted that no advertisement was issued prior to his engagement nor any appointment letter was handed over to him. He has also expressed his ignorance if any other person like him was engaged in the management. On this evidence the Ld. Counsel for the management argued that the management is a government department having its own rules and procedure for recruitment of Motor Lorry Driver.

Both parties have admitted that soon after the alleged termination of the claimant a new person has been engaged to discharge the duty of the driver. On the basis of the said admitted facts when the claimant argued that the management despite having vacancy in the post of Motor Lorry Driver terminated his service and engaged new persons instead of regularizing his service, the management has pleaded and argued that management follows the procedure for appointment of the Motor Lorry Driver and any engagement if at all was made in respect of the claimant without following that procedure, cannot confer any kind of right on him. Thus, from the evidence it is clearly evident that the claimant was never given any appointment letter nor was his appointment through due process of recruitment of the management.

Now it is to be seen if the claimant has succeeded in proving his relationship with the management as the employee of the later. The law is well settled that the burden of proving employer and employee relationship always rests on the person ascertaining the same. In the case of **Ram Singh and others vs. Union territory of Chandigarh and others reported in (2004)1SCC page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc. The factual matrix of the present dispute as evident from the oral and documentary evidence is that no advertisement was issued for the appointment of the claimant nor any appointment letter was issued. Whereas both parties have admitted that the contractors are introduced for providing manpower to perform the duty of the driver, the claimant has pleaded that the said contract is sham and bogus. But no evidence to justify the same has been produced. On the contrary during cross examination the claimant has admitted that he was getting the remuneration from the contractor alone and not a single scrap of paper has been filed to show that the salary was ever credited to him by the management. Similarly there is no document available on record to presume that the management was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the management and he was signing the attendance register in acknowledgment of his daily attendance of duty. The mutual obligation in the nature of deducting PF subscription and extension of other benefits is no way evident from documents filed by the parties. Production of photocopies of log book marked as MW1/1 is not way helpful to the claimant as the said document no were contains evidence that the claimant as the employee of the management was driving the vehicle owned by the management. Since, it is the admitted state of fact by both the parties that the contractor had engaged the claimant for driving the vehicle, this discharge of duty cannot confer the status of the employee on the claimant as claimed by him. Once the employer and employee relationship is not established it is not proved that the claimants service was terminated and that to illegally without

following the provisions of section 25F of the ID Act by the management. This point is accordingly decided against the claimant workman. In view of the finding arrived in respect of issue no.1 holding that the claimant was not the employee of the management, it cannot be held that his service was illegally terminated in gross violation of the provisions of section 25F of the ID Act. These two issues are accordingly answered against the claimant.

ISSUE NO.3

In view of the finding arrived in respect of issue no.1 and 2 it is held that the claimant is not entitled to the relief sought for. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest and the reference is accordingly answered against the workman. Copy be supplied to the parties and the record be consigned in the record room.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
15th February, 2022.

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