

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-I, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 130/2015

Date of Passing Award- 26.05.2022

Between:

Shri Ashok,
S/o Hari Chand,
C/o General Secretary, Municipal Employees Union,
Agarwal Bhawan, G.T Road,
Tis Hazari,
New Delhi-110054.

Workman

Versus

The Commissioner,
Municipal Corporation of Delhi (South)
Dr. S.P Mukherjee Civic Centre, J.L Nehru Marg,
Delhi-110002.

Management

Appearances:-

Shri Rajiv Agarwal
(A/R)

For the claimant

Shri Rajiv Bhardwaj
(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 Municipal Corporation of Delhi, 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-42011/31/2015 (IR(DU) dated 13/05/2015 to this tribunal for adjudication to the following effect.

“Whether the action of the management of MCD in not regularizing the employment of Ashok Kumar on the post of ward boy with retrospective effect from the initial date of his joining into the employment i.e April 2001 is illegal and unjustified and whether the said workmen is entitled to receive consequential benefits on the principle of Equal pay for equal work from his date of initial appointment i.e. April 2001? Yes what relief the workman is entitled to.

In the claim petition the claimant has stated that he was appointed as a ward boy in the establishment of the management in the month of April

2001 as a daily wage employee and his initial place of posting was in Najafgarh Zone. Subsequently he was transferred to different places and asked to work in the maternity centre, dispensary and hospital etc under the management. He has rendered continuous service to the management except for 6-7 months in the year 2006 on account of his own health issues. But the management never considered to regularize his service though he was working against a permanent post and there was vacancy for the said post in the management. The claimants demand for regularization and equal pay for equal work was never considered by the management which amounts to unfair labour practice. The management on the contrary regularized the service of persons working in the muster roll and junior to him. The action of the management in continuing the workman to work as a casual and temporary employee for years and thereby depriving him of his legitimate rights was discriminatory. A demand notice dated 14.04.2010 was served by the claimant on the management. But no reply to the same was ever given. The claimant raised a dispute before the conciliation officer but for the non cooperative attitude of the management the conciliation failed. The appropriate government then referred the matter to this tribunal for adjudication in terms of the reference.

Being noticed the management appeared and filed written statement denying the claim of the claimant. The specific stand taken by the management is that it has its own policy for regularizing the service of the daily wager and muster roll employees in phased manner. The said regularization is subject to availability of post, fund, and in accordance to the seniority. There is no provision for regularizing the service of the daily wager from the initial date of engagement. The persons who have continuously worked for 240 days or more in the calendar years are usually considered. The claimant was an in disciplined employee and very irregular, irresponsible and used to remain absent without prior intimation or permission of the management. Thus, when other persons were considered for regularization the claimant was left out for the unsatisfactory track record. With regard to the claim of the claimant for equal pay at par with the regular employees the management by citing the judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Jasmer Singh (1996) 11SCC77** have pleaded that the Hon'ble Supreme Court have clearly held that the persons employed on daily wage cannot be treated at par with the persons on regular service as the daily wagers are not required to possess the qualification required for regular workers. The claimant of this proceeding was paid wage as per the minimum wage declared time to time by the appropriate government. Citing the judgment in the case of **Secretary State of Karnatak vs. Uma Devi** management has pleaded that the court cannot impose on a state a financial burden by insisting on regularization of the persons employed temporarily. Thereby the management has challenged the maintainability of the proceeding. The management has also denied the claim of the claimant that by working for 240 days in a calendar year he is entitled to the status of the permanent employee.

The claimant filed rejoinder to the WS of the management stating that the demand notice was served on the management on 14.04.2010. But the management never filed any reply to the same. It has also been stated that the management had earlier regularized the service of the Muster Roll Employees from the date of their initial engagement. Relying on the judgment of the Hon'ble Supreme Court in the case of **ONGC Limited vs. Petroleum Coal Labour Union and others (2015) II LJ 2057 SC** the claimant has stated that when a casual worker has completed 240 days in continuous service he is entitled to regularization. Since, the claimant has worked for more than 240 days in the preceding calendar year the management should have regularized his service. Instead the management has meted unfair labour practice by not considering his candidature for the same.

On these rival pleadings the following issues are framed for adjudication.

ISSUES

1. Whether the reference is not legally maintainable in view of the various preliminary objections.
2. In terms of reference.

The claimant testified as WW1 and filed a series of document marked as WW1/1 to WW1/10. The said documents include demand notice the office order dated 20.04.2001 issued by the management transferring him to Najafgarh the office order transferring him to Hindu Rao Hospital and other places. He has also filed the copy of the espousal resolution and the claim petition filed before the Labour Commissioner. The General Secretary of Municipal Employees Union testified as WW2 to prove the fact of espousal. Both the witnesses were cross examined at length by the management. On behalf of the management the Deputy Director Hospital Administration testified as MW1 and proved the documents marked as MW1/1 to MW1/3. These documents include the resolution of the management dated 27.06.1988 wherein it was decided to regularize the service of the persons engaged on daily wage/muster roll prospectively subject to the availability of the post and the nature of the work with regard to a particular financial year. She has also proved the copy of the circular dated 23.02.2007 wherein it was decided that the criteria for calculation of 240 days of continuous service shall be considered for regularization of a person. The calculation sheet showing the work done by the claimant month wise has also been filed.

At the outset of the argument the Ld. A/R for the claimant submitted that the judgment of the Hon'ble Supreme Court in the case of Uma devi referred supra has no applicability in the Industrial Adjudication. Relying upon the judgment of **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** and **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil appeal No. 6327 of 2014** he

submitted that the Hon'ble Supreme Court have clearly held that the effect of the judgment passed by the constitution bench in the case of Uma Devi cannot over ride the powers of Industrial and Labour Courts once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the industrial and labour courts of their statutory power. In reply the Ld. A/R for the management counter argued that the management has a policy of regularizing the daily wagers and muster roll employees in a phased manner and the claimant since could not meet the prescribed criteria was not considered for regularization. The same cannot be termed as unfair labour practice.

FINDINGS

Both the issues framed being interlinked are taken up for consideration together. It is the grievance of the claimant that he is working as a ward boy for the management from April 2001 and continuing as such. He is not being granted the minimum wage or the wage at par with the salary of the regular ward boys. Since, he raised demand for his legitimate claims the management made him a victim of non regularization. To support the oral testimony that he is employed since April 2001 the copies of his transfer letters to different places in the management have been filed. The management while filing WS has admitted that the claimant was appointed as a daily wager and continuing as such. The only explanation with regard to his non regularization offered by the management is that he is an irregular and irresponsible employee and for that reason his candidature for regularization was not considered. Whereas the claimant has taken the name of some of the employees regularized in the meantime who were standing in the same footing as of the claimant the management has admitted the same. But surprisingly no evidence has been adduced by the management to prove how the claimant could not meet the eligibility criteria for regularization. The law provides that a party asserting the existence or non existence of a particular fact bears the responsibility of proving the same. But in this case the management has not adduced any evidence at all to prove that the claimant for his indisciplined attitude was no considered for regularization.

The Ld. A/R for the claimant since disputed the criteria of 240 days as a condition precedent for regularization, the Ld. A/R for the management drew the attention of the tribunal to the document marked as MW1/1 (colly) which is a circular dated 23.02.2007. As per this circular the Chief Labour Welfare Officer of the management has clarified that 12 calendar months from the initial date of engagement of daily wagers may be considered for calculation of 240 days in a year to compute the continuous service in a year for daily wager. The Ld. A/R for the management further drew the attention of the tribunal to the photocopy of a document which appears to be an excel sheet prepared indicating the days of work discharged month wise by the claimant in a calendar year. But no copy of the attendance register or any register containing primary evidence in this regard has been filed. Hence, these documents cannot be accepted to hold that the candidature of the

claimant for regularization was not considered solely for the reason that he had not worked for 240 days in the calendar years since the date of his initial engagement and till the other persons were considered for regularization. The witness examined on behalf of the management, during cross examination has admitted that the claimant is working against the vacant post of ward boy and there is no complaint ever received with regard to his conduct. She has further stated that except for 6 to 7 months in the year 2006 the claimant had worked continuously and the said absence of 6 to 7 months was on account of his illness. She has further admitted that the management has its own policy to regularize the daily wagers and casual employees. The ward boys who had joined the management between 01.04.2000 to 31.03.2003 have been regularized w.e.f 01.04.2006, since they had completed 240 days of work in a calendar year. The evidence on record nowhere shows that the claimant had not worked for 240 days in the years preceding to his claim. In Para 6 of the affidavit the management witness has stated the number of days the claimant had worked during the period 2001 to 2016. As seen except for the financial year 2005-2006 and 2006-2007 he had worked for more than 240 days in each year preceding to 2006 when his counter parts were regularized. The evidence of the management witness is self explanatory that in the year 2005-2006 the claimant was absent for sometime on account of his illness. Thus, from the evidence adduced by the management witness, the stand of the management that the claimant was not regularized since he had not completed 240 days of work in a year as prescribed under the circular stands disproved.

Now it is to be seen if the claimant was subjected to unfair labor practice and what remedy is available to him. **Unfair labour practice** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said V Schedule to employ the workman as Badli, casual or temporary and to continue him as such for years with the object of depriving him of the status and privilege of permanent workman amounts to unfair labour practice. In this case from the documents filed by the management it is clearly evident that the claimant is working in different places and healthcare centers run by the management since the year 2001 but his candidature was never considered to confer the permanent status on him. The management in utter disregard of law deprived him of his legitimate rights which amounts to unfair labour practice.

Though the Ld. Counsel for the management on the basis of the judgment of Uma Devi referred supra argued that the claimant cannot claim regularization as a matter of right and the management having a policy for the same reserves the right of considering the candidature of an individual workman the same does not sound convincing. Though, in the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment the Hon'ble Supreme Court in the case of

Maharashtra Road Transport and Ajay Pal Singh referred supra have again taken a view that the judgment of Uma Devi is not applicable to the industrial adjudication.

Now it is to be considered what relief the claimant is entitled to. In the claim petition the claimant has prayed for regularization from the date of his initial appointment. The management has disputed the same on the ground that regularization is subject to availability of post, fund, and eligibility of the workman. A resolution of the management has been filed and marked as MW1/1. This resolution dated 27.06.1988 clearly prescribes that the regularization of persons engaged on daily wage/Muster Roll is to be done prospectively keeping in view the budget provision and on the basis of actual requirement of work. The management witness Dr. Alka Gupta during cross examination has stated that the similarly situated ward boys who joined the employment of the management between 01.04.2006 to 31.03.2003 were regularized w.e.f 01.04.2006 ie. from the beginning of the financial year. The claimant of this proceeding had joined the employment of the management in the month of April 2001. As stated in the preceding paragraph he had also worked for 240 days or more in the calendar years preceding to 2006 making himself eligible for regularization. But for reasons best known to the management he was left out of the consideration and was treated in a discriminatory manner which amounts to unfair labour practice.

The said unfair labour practice can only be remedied by regularizing the claimant against the post of ward boy w.e.f 01.04.2006. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant to the extent that he is entitled to regularization of his service in the post of ward boy w.e.f 01.04.2006 and to receive the consequential pay scale and other service benefit attached to the post. The management is directed to regularize the service of the claimant as directed above within 3 months from the date of publication of the award and release his financial benefit due to him including the arrear salary w.e.f 01.04.2006 without interest failing which the accrued financial benefit shall carry interest @9% per annum from 01.04.2006 and till the final payment is made. 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.
26th May, 2022

Presiding Officer.
CGIT-cum-Labour Court.
26th May, 2022