

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. 67/2014

Date of Passing Award- 14.02.2022

Between:

The President,
Ashok Hotel Mazdoor Janta Union,
Ashok Hotel, Staff Quarters, C-48/49,
Chanakyapuri,
New Delhi-110021.

Workmen

Versus

The General Manager
Ashok Hotel, 50-B, Chankyapuri,
New Delhi-110021.

Management

Appearances:-

Shri S.S Upadhyay
(A/R)

For the claimant.

None for the management
(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 M/s Ashok Hotel, 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-42011/64/2013 (IR(DU) dated 26/08/2014 to this tribunal for adjudication to the following effect.

“Whether the contractual workmen Shri Akhilendra Kumar and 14 others are entitled for regularization in the respective category employees of the management of M/s Ashok Hotel? If not, what relief may this workmen entitled to?”

As per the claim statement the claimant Shri Akhilendra Kumar and 14 others are working in the Front Office Accounts Section and Restaurant Account Section of Ashok Hotel their appointment was way of verbal order. Though the claimants are working under the direct supervision and control of the management of Ashok Hotel the management in order to camouflage the employer and employee relationship has shown them to be the employees of the contractors. The work discharge by the claimant is equal to

the nature of the work discharged by their counterpart permanent employees and they are discharging the duties to the utmost satisfaction of the employer, the management was discriminating them in respect of the salary paid. The management is not even extending them all other benefits available to the permanent employees working as Cashier. The management is only paying them the minimum wage declared by the Government of Delhi, from time to time this amount to unfair labour practice. Not only that the management Ashok Hotel is a public sector/government organization functioning under ITDC Ministry of Tourism and doesn't have the registration with the Labour Department to engage contract labours. Even then the management manage to show the claimants as if engaged through contractors who have no license under the CLARA though the claimants were time and again raising objection about the unfair labour practice meted to them, the management was not paying heed to the same. The claimants thus, approached the Ashok Hotel Mazdoor Janta Union as its members and the said union after passing a resolution dated 28.01.2017 issued the demand notice to the management. Having failed in their effort, the claimants through the union raised a dispute before the Labour Commissioner where conciliation was attempted. No conciliation could be effected for the adamant attitude of the management and the appropriate government referred the matter to this tribunal for adjudication. In the claim petition the claimants have further stated that the management has cleverly engaged the contractors to show the claimants as the employees of the said contractors. Infact the claimants are getting the salary from the management who is also making the contribution of the EPF and ESIs as the employer but through the contactor. Thus, for all Practical purposes the claimants are the employees of the management Ashok Hotel and discharging the work which are perennial in nature. The presence of the contactor is sham and intended to camouflage the employer and employee relationship. In some earlier cases this tribunal as well as the Hon'ble High Court of Delhi and the Hon'ble Supreme Court have ruled that the persons working as contractual employees for a long period under the management are entitled to regularization of service and salary and other benefits at par with the counterpart regular employees. Hence, the claimants have prayed that the management may be directed to regularize the service of the workmen as per annexure A in the regular pay scale of the category to which they belong to alongwith all other service benefits like allowances, leave etc from the day they are working in the Hotel as mentioned in Annexure A.

The management when noticed did not appear and no written statement have been filed. By order dated 24.05.2019 management was proceeded ex-parte. Hence, the points for determination while answering the reference are as follows.

POINTS

1. Whether the claimants are entitled to be absorbed against the permanent vacancy by the management and their service be regularized.
2. To what relief the claimants are entitled to.

On behalf of the claimant Shri S.S Updhaya the President of Ashok Hotel Mazdoor Janta Union testified as WW1. Some of the workmen testified as WW1/2 to WW1/11. All the witnesses have filed series of documents in support of their claim.

At the outset of the argument the Ld. A/R for the workmen submitted that the workmen are entitled to the relief sought for since they have successfully proved that they are working in the premises of the respondent for a long period and the management has full control and supervision over their work. Though no documents have been produced to prove that they are getting salary directly from the management, the same cannot stand on their way for proving their relationship with the management as the employer since the said document remain in possession of the employer having no access by the employees. It was also argued that the claimants have filed the attendance register duty distribution book photocopies, inter office communication security pass, ID card, Maintenance register etc. prepared at the instance of the management to prove that they are working in the premises of the management under the direct supervision and control of the later. The Ld. A/R for the management also argued that the attendance register and duty distribution book filed by the claimant workmen clearly proves that they have work for more than 240 days continuously in the calendar year which makes them entitled to the claim of the regularization as temporary employees. While disputing their engagement through the contractor the claimants have stated that the management in order to avoid the legal question relating to the same have intentionally avoided the proceeding and did not appear even though the notice of the proceeding was duly served. To support the argument the Ld. A/R for the claimants has placed reliance in the case of **Balwant Rai Saluja vs. AIR India Limited reported in AIR 2015SC 375** and the case of **Bhilwara Dugdh Udpadak Sahakari Samiti Limited vs. Vinod Kumar Sharma and others reported in AIR 2011 SC3546** and in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and others reported in (2002)2 SCC 244**.

FINDINGS

POINT No. 1

The workmen have filed affidavit stating the specific dates when they joined the employment of the management. Alongwith the claim statement the list has also been annexed indicating the dates of joining of the individual workmen and the designation for which they are working. In the

oral statement the witnesses have stated that they are continuing in their work uninterruptedly and for every calendar year they have worked for more than 240 days. Neither any appointment letter was issued to them nor any other document acknowledging their services were provided despite repeated demand. However, they were working under the direct control and supervision of the management though they have been shown as employees of the contractor which is nothing but an attempt by the management only to deprive them of their legitimate right. The witnesses examined as WW2,3,4,5,6,7,8,9,10,11 while filing the documents such as ESI Card, Guest Complaint Slip, VVIP Security Pass, attendance register, the training certificates provided by the Ashok Institute ITDC copies of the different bills etc have stated that these documents prove their continuous and uninterrupted service under the management. Not only that some internal letter correspondences of the management have also been filed. All these witnesses were not cross examined since the management did not appear and participate in the proceeding. Thus, the undisputed and uncontroverted oral and documentary evidence adduced by the claimants lead to a conclusion that they are working against permanent vacancies which are lying vacant since 2001 as the management is not making recruitment since then. The oral evidence also proves that the nature of work discharged by the claimants are perennial in nature. There is no dispute on the facts that the management has shown them as the employees of the contractor. But surprisingly no document or evidence has been placed on record by the management to prove that the management Ashok Hotel is registered for engagement of contract labours nor the so called contractors are having license for engagement of contract labours. It is the further case of the claimants that the management instead of paying them the regular pay scale for the post held by them as is being paid to the regular counter parts is paying them the minimum wage declared by the Government of Delhi. Describing the same as unfair labour practice the claimants have claimed for the relief of regularization. It is also an admitted state of fact that no appointment letter was ever issued by the management to the claimants. Thus, except the attendance register and duty distribution register the claimants are not in possession of any other document to prove their continuous employment and employee status under the management.

In the case of **Steel Authority of India vs. National Union Waterfront Workers reported in (2001)7SCC Page1** the Hon'ble Apex Court in order to resolve the dispute relating to employer and employee relationship have prescribed for the effective control test. Not only that way back in the year 1958 the Hon'ble Apex Court in the case of **Chintaman Rao vs. State of MP reported in AIR 1958Page 388** had ruled that the concept of employment involves 3 ingredients (i)employer (ii)employee (iii)contract of employment. The employer is one who employes or engages the service of other person. The employee is one who works for and another for hire. The employment is the contract of service between the employer and the employees, where under the employee agrees to serve the employer

subject to his control and supervision. In the case of workmen of **Food Corporation of India vs. Food Corporation of India reported in AIR 1985(SC)670** the Hon'ble Apex Court further pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employs a workmen to do the work which he contracted with a third person to accomplish, the workmen of the contractor would not become more than the workmen of the third person.

On behalf of the workmen the Ld. A/R took this tribunal through the case of **Balwant Rai Saluja vs. Air India Limited** decided by the Hon'ble Apex Court to submit that the doctrine of Piercing the corporate veil comes to be used in a scenario wherein it is evident that the company or contractor was a mere camouflage or sham, deliberately created by the persons exercising control over the said company or the contractor for the purpose of avoiding the liability. Intent of piercing the veil must be to remedy the wrong done by the person controlling the company.

In this case in view of the stands taken by the claimants it is felt proper to examine if the presence of the contractor was intended by the respondent to avoid the liability and if the respondent was exercising supervision or control over the act of the claimants.

In this case the workmen examined as witnesses have all along maintained that they are working under the supervision and control of the management and not the contractor. While testifying as WW2 to WW11 they have deposed to prove the same. To support their stand they have also filed documents like attendance register, duty register, ID card, Security pass, conveyance bill etc. as stated above the oral and documentary evidence stands uncontroverted. Hence, the oral evidence of the workmen coupled with the documents filed by them lead to a conclusion that the claimants of this proceeding are working in the premises of the management since the year 2002 to 2008 and continuing as such. In absence of documents it cannot be presumed that they are the employees of the contractor. Rather the oral evidence clearly proves that the claimants are working under the supervision and control of the management Ashok Hotel and receiving the wage from it and the presence of the contractor is nothing but sham to camouflage the employer and employee relationship.

It is the decided Principle of law that the employer and employee relationship is a question of fact and burden lies on him who asserts the existence of the same. In this case the claimants have successfully established their relationship as employee of the employer Ashok Hotel.

Now it is to be seen if the claimants of this proceeding were subjected to unfair labour practice or not. "**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 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts

to unfair Labour Practice. In this case the document filed by the workman and marked as exhibit clearly indicates that these claimants are working in the different capacities for a prolonged period and they have expertise in different type of works. The management in utter disregard of law, deprived them from regularizing their service against the vacant post.

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. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were prevented from participating in the selection procedure describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Maharashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers of Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra, the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

“The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.”

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh referred supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on daily wage basis for a prolong period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

“Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for

years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified.”

In this case the oral and documentary evidence since proves the continuous service of the workmen for the management on daily wage basis for a prolonged period, the decision of the management in not regularizing their service against the permanent vacancy is held to be illegal and unjustified. This point is accordingly answered.

POINT NO.2

Here is a case where as indicated above the workmen have been victimized on account of unfair labour practice by the management. The posts for which they are aspirants are perennial in nature but they are not getting the pay scale which their counterpart regular employees are getting. Keeping the situation in view it is felt proper to issue a direction to the management to frame a scheme for regularization of these workmen within a period of 3 months against the permanent post according to their eligibility, experience and expertise which would meet the ends of justice and grant them pay scale equal to the pay scale of the permanent employees holding similar posts from the date of their initial appointment. This direction is specific in respect to the workmen of this claim petition as per the list annexed to the award and passed in exercise of the power conferred on the tribunal to grant any other relief as per the reference received from the Appropriate Government. The management is further directed to complete the exercise as directed above within the time stipulated and pay the arrear of the dues to the individual claimants without interest within next two months failing which the amount accrued shall carry interest @ 6% from the date of accrual. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The management is directed to frame a scheme for regularization of these workmen as per the list annexed within 3 months and regularize their service as indicated above. The management is further directed to complete the exercise as directed above within the time stipulated and pay the arrear of the dues to the individual claimant without interest within next two months failing which the amount accrued shall carry interest @ 6% from the date of accrual 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.

S.No.	Name	Fathers Name	Working since
1.	G. S Negi	Shri P. S Negi	10.12.2002
2.	Pawan Kumar	Shri Bani Singh	01.10.2006
3.	Akhilendra Kumar	Shri Manphool Singh	10.12.2002
4.	Parveen Kumar	Shri Late Joginder Singh	08.11.2004
5.	Kishan Lal	Shri Harji Ram	March 2003
6.	Kamal Bansiwal	Shri Om Prakash	20.02.2004
7.	Dinesh Pant	Shri U.R Pant	08.11.2004
8.	Arjun Singh	Shri Guru Charan Lal	22.10.2005
9.	Sanjeev Kumar	Shri Dharamveer Singh	05.05.2005
10.	Sudhir	Shri Rajesh Kumar	23.08.2008
11.	Abhisek Tripathi	Shri Brijmohan Mani Tripathi	23.08.2008
12.	Wazir Singh	Shri S.P Singh	04.05.2007
13.	Mohd. Shirazi	Shri Mohd. Hanif	01.08.2008
14.	Ashish	Shri Om Prakash	16.09.2006
15.	Gopal Dasila	Shri Dan Singh Dasila	19.06.2008

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
14th February, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
14th February, 2022.