

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. 90/2012

Date of Passing Award- 21st February, 2022.

Between:

The District Secretary,
Bhartiya Mazdoor Sangh,
32, Chakrata Road,
Dehradun.

Claimant

Versus

The Group General Manager,
(Head Corporate Admn.),
ONGC, Tel Bhawan,
Dehradun,

Management

Appearances:-

Ms. Poonam Kaushik
(A/R)
Shri Avinash Singh
(A/R)

For the claimant

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 ONGC, Dehradun 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-30012/6/2011 (IR(M)) dated 29.02.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of ONGC, in terminating services of Shri Pooran Singh and Shri Sudesh Kumar without complying with 25F,G,H of Industrial Dispute Act, 1947, is legal and justified? What relief the workmen are entitled to?”

As per the claim statement the claimant Pooran Singh was engaged by the management ONGC as a contingent labour w.e.f 01.01.86. After one and half year he was directed to work in the community centre in the premises of ONGC Dehradun. In both the places he was discharging the work of housekeeping and distribution of Dak etc. Similarly the other claimant Shri Sudesh Kumar was working in the Community Centre ONGC w.e.f

01.07.1990 and discharging the same nature of work like Pooran Singh. During their employment though they were getting the minimum wage as notified by the government, the management was not allowing them weekly off, casual leave, earned leave etc. Not only that they were not extended the benefit of EPF and ESI too. Though they were working for 10hrs in a day no overtime due was being paid to them. The Community Centre is situated in the premises of ONGC and a part of ONGC management. The General Manager of ONGC is the ex-officio President of the Employee Welfare Committee managing the Community Centre. The members of the said committee are elected at an interval of 2 years. A person an employee of ONGC and member of EWC is only competent to be elected. This Community Centre manages its affair under the supervision of the president who is the Group General Manager of ONGC. The persons working in the Community Centre are being appointed by the said Group General Manager in the capacity of the President of the committee of the EWC and the persons employed get their salary from ONGC only. While the matter stood thus on 01.01.2010 by an oral order the service of both the claimants were terminated by the ONGC. At the time of such termination no notice, notice pay, or termination compensation was paid. They were not even paid the duty pay for the month of November and December 2009. Being aggrieved by such illegal termination after continuous work for 26 years and 20 years respectively they raised a dispute before the Labour Commissioner Dehradun. Though steps were taken for conciliation, the same failed for non cooperation of the management. The Appropriate Government thereafter referred the matter for adjudication in terms of the reference.

Being noticed the management ONGC appeared and filed Written Statement. Amongst others the management has challenged the maintainability of the proceeding for a joint claim being filed by the claimants invoking the provisions of section 2A of the ID Act. The other challenge to the maintainability is for non joinder of the president and Secretary of the EWC. The specific plea of the management is that there exists no employer and employee relationship between the management ONGC and the claimants. It has been stated that ONGC has its own established procedure for recruitment of the staff. EWC is a body of individuals created for providing the facilities and promoting the hobbies of the employees of ONGC and their wards. EWC is also having a Community Centre for providing space for occasions like marriage social & religious meetings functions etc which are only welfare measures. The function of EWC is not covered under any legal provision nor ONGC is under any kind of statutory or other obligations for the function of EWC. Said EWC has its own constitution which provides for a president and a committee under him. The project head/ Asset Manager is the ex-officio President of the EWC and the other members of the committee are elected for two years from among the members of EWC who in turn elect the Secretary and distribute other portfolios among the elected member. The EWC gets some grant-in-Aid from ONGC. Besides that it manages its affairs from out of the membership

fees, donations and the charges realized for renting out the community hall ground etc. The EWC is having a distinct identity with its separate office bearers, Bank account etc and the affairs of the same are audited by outside auditors. While denying the claim that the claimants were initially appointed as contingent labours of ONGC, the management has stated that the workmen were infact engaged by EWC and getting the wage from EWC for the work done by them. The committee exercises full control over its expenditure and makes payment to the persons engaged for any kind of work of EWC. While denying all other allegations including nonpayment of over time dues and leave etc the management ONGC has pleaded that the claim advanced by the claimants is illegal against ONGC and liable to be rejected. It has been stated that the secretary of EWC is responsible for day to day affairs of the Community Centre where cultural and sports activity social functions are often organized. Said EWC might have hired the service of the claimants for housekeeping and might have paid them remuneration according to the work done. The same shall not create any liability on the part of ONGC as the employer of the claimants. With such assertion the management ONGC has pleaded for dismissal of the claim.

The claimants filed replication to the written statement repeating the statement made in the claim petition. In addition to that it has been stated that the ONGC has deliberately suppressed the truth though EWC is a part of ONGC and all persons employed to work in the Community Centre or other places in the premises of ONGC are the employees of ONGC.

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

ISSUES

1. Whether there is no relationship of employer and employee between the parties.
2. Whether the employees of welfare committee were authorized to engage the claimant on behalf of the management.
3. As in terms of the reference.

During the hearing both the claimants examined themselves as WW1 and WW2. Though while tendering the affidavit evidence WW1 Pooran Singh stated that he is relying upon the documents marked as WW1/1 to WW1/4 and PW2 Sudesh Kumar stated that he is relying upon the documents marked as WW2/1 to WW2/6. No other document has been placed on record by the claimants except few certificates issued to them by the secretary of EWC. On the other hand the management examined two witnesses namely Sanjay Bhatt and Ram raj Dwividi as MW1 and MW2 respectively. Whereas MW1 proved 4 documents which are the constitutions of Staff Welfare Committee the order passed by the authorized officer under the payment of wages Act and two receipts granted by both the claimants on receipt of Rs. 12000/- each towards the unpaid wage for the month of November and December 2010, MW2 has proved certain documents marked as MW2/1 to MW2/6 which include the copy of staff position of Class IV

employees of the management and the recruitment and promotion regulation etc.

At the outset of the argument the Ld. A/R for the claimants submitted that both the claimants had worked for 26 years and 20 years respectively for the management and the later in a very unsympathetic manner terminated their service and while doing so grossly violated the provisions of section 25F,25G,25H of the Id Act. This amounts to unfair labour practice at the instance of a mighty employer like ONGC. She also pointed out that the claimants are not in possession of any document except few certificates issued to them by the secretary of EWC, to prove that they were working continuously for the management and had completed 240 days of work in the preceding year to the date of their termination. Thus, the claimants had filed an application invoking the provisions of section 11(3) of the ID Act calling upon the management to produce the documents. But the management cleverly denied possession of the documents leaving the claimants in an un-done positions. Hence, the oral evidence adduced by the claimants carry necessary weight in proving the claim. The Ld. A/R for the management ONGC on the contrary argued that the management not being the employer of the claimants is not in possession of the documents and thus bonafidely denied the possession. He thereby argued that the claimants carry the primary burden of proving the employer and employee relationship and the fact that they had completed 240 days of work in the calendar year preceding to the date of termination, which they have miserably failed to prove.

FINDING

ISSUE NO.1

Both the claimants in their affidavit and during the cross examination have stated in clear terms that they were the employees of ONGC and were asked to work in EWC. Though they were getting salary from EWC the later was getting the grant from ONGC out of which their salaries were being paid. Not only that they have stated as witnesses that the secretary of EWC who is none but an employee of ONGC acts under the instruction of the ex-officio president of EWC who is the group General Manager of ONGC. This assertion of the claimants has been denied vehemently by the witnesses examined as MW1 and MW2. By filing the constitution of EWC it has been stated that the staff welfare committee so constituted shall be under the General Control of ONGC and the committee shall organize different welfare activities for the staff of the ONGC. The Funds of the committee shall consist of Grant received from ONGC, contribution from the members, donations and other mis-receipt. Nowhere under the constitution of EWC, provision has been made for running the committee by the staff of ONGC. The Ld. A/R for the management thus argued that the committee having its own fund sometimes engages persons for its smooth functioning and the persons so engaged cannot claim to be the employees of ONGC, which has a

separate procedure for recruitment. Copy of the regulation for recruitment has been placed on record as MW1/1.

This is the most important issue for adjudication in this proceeding. In order to decide whether the service of the workmen was terminated illegally by the management, it is to be decided at the first instance if the workmen were working as class IV employees for the management ONGC, and there exists an employer and employee relationship between them. In their oral statement both the witnesses have stated that they were discharging the duty of sweeping and distributing the Dak and performing other works as and when directed. The management took a stand that they were never working for ONGC and might have worked for EWC. The law is well settled that the burden of proving the employer and employee relationship always rests on the person who asserts 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 by the Hon'ble Apex Court 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 evidence is that no payment was directly made to the claimants by ONGC nor they were ever asked to work for ONGC. Claimant Pooran Singh though has stated that for some time he was working in ONGC, no document to that effect has been filed. The other claimant Sudesh in his oral testimony has clearly stated that he was working from the beginning at the community centre under the control of EWC. He has also admitted during cross examination that it is the secretary of the community centre who was paying him the monthly wages. Both the claimants have admitted that their employment was brought to an abrupt end when they were working in the community centre run by EWC. Thus there is no material on record to believe that there was any kind of relationship between the ONGC and the claimants as employer and employee. The Ld. A/R for the claimants took this tribunal through the cross examination of MW1 wherein the said witness had admitted that the management of ONGC provides manpower like Safai karamchari etc for the community centre and further admitted that EWC receives grants from ONGC out of which wage is being paid to the Safai karamcharis. But this evidence of MW1 is of no help for the claimants since the said MW1 has further stated during cross examination that the persons employed by the EWC for housekeeping are paid by EWC and not by ONGC. In the same line MW2 has stated that EWC can appoint part time worker for attending their own office work and can terminate their service. Thus, from the totality of the evidence adduced and in absence of evidence to the effect that claimants were appointed by ONGC or working under its supervision and control, there is nothing to presume employer and employee relationship between the claimants and ONGC. Be it's stated here that the EWC has not been made a party in this proceeding.

The other point canvassed by the claimants is that they had worked for 26 years and 20 years respectively for the management ONGC and their termination without compliance the provisions of section 25f, 25G, 25H of the Id Act at the time of termination amount to unfair labour practice since they had worked for more than 240 days in the preceding calendar year of the date of termination. The Ld. A/R for the claimants by placing reliance in the case of **Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda Supreme Court 2009(13) SCALE636** submitted that when the claimant gave oral evidence about 240 days work done by them without supported by any document, the burden shifts on to the management to disprove the same as a casual employee hardly gets access to the documents of the management. Adverse inference is bound to be drawn against the management. In reply the Ld. A/R for the management submitted that when the employer and employee relationship between ONGC and the claimant is not proved the burden cannot shift on to the ONGC to disprove that the claimants had not worked for 240 days or more in the management. No explanation has been offered as to why EWC is not a party to this proceeding for which the management has challenged the maintainability. Thus taking all the circumstances and evidence into account it is held that there exists no employer and employee relationship between the management ONGC and the claimants and it is also not proved that the claimants had worked for 240 days or more for ONGC and ONGC is liable for meting out unfair labour practice towards the claimants for not complying the provisions of section 25F, G, H of ID Act. This issue is accordingly answered against the claimants.

ISSUE No. 2 and 3

No evidence has been adduced at all by the claimants to prove that the EWC is authorized to engage the claimants on behalf of ONGC. Thus, there being no employer and employee relationship between the claimants and the ONGC it cannot be said that the service of the claimants was illegally terminated by the management. This issue is accordingly answered against the claimants and it is held that they are not entitled to the relief sought for. The reference is accordingly answered. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest. 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.
21st February, 2022.

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CGIT-cum-Labour Court.
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