

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. 03/2015

Date of Passing Award- 02/06/2022

Between:

Shri M. N Singh,
S/o Late S.P Singh,

Through:- General Secretary,
CPWD Mazdoor Union,
Room No. 95, Barracks No. 01/10,
Jam Nagar House,
Shahjahan Road,
New Delhi-110011.

Workman

Versus

The Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-110001.

Management

Appearances:-

Shri B.K Prasad
(A/R)

For the claimant

Shri M K Sharma
(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 CPWD, Nirman Bhawan 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-42011/107/2014 (IR(DU) dated 15/12/2014 to this tribunal for adjudication to the following effect.

“Whether Shri M N Singh, S/o Late S.P Singh is entitled to be regularized as Group D employee? If so from which date and what directions are necessary in this respect?”

As per the claim statement the claimant workman was appointed as a peon cum waterman in Group D post as a daily rated worker in the management w.e.f 01.03.1988 under the C and F Division of the management. However he was discharging the duty of a skilled category worker by attending the Telephone calls noting down the complaints and

maintaining the diary and dispatch etc. his service was terminating from 03.1993 illegally. The claimant had approached the CGIT-2 New Delhi by filing Id Case No. 03/ of 1998. The Tribunal allowed the claim and by award dated 26.04.2004 came to hold that the termination of his service is illegal and the management has deprived him of regularization of service and payment of wage on the basis of equal pay for equal work. Thus, the tribunal by its order directed for reinstatement of the claimant in the post of Peon cum waterman as a regular employee and also directed payment of back wages at the rate of wage paid to other employees at par of the regular cadre.

The management challenged the award before the Hon'ble High Court of Delhi by filing WPC No. 6535 of 2005. The Hon'ble High Court by order dated 20.04.2007 upheld the order of the tribunal. The management then challenged the said order of the High Court by filing LPA NO. 1228 of 2007. But the same was dismissed. But the management in gross violation of the award passed and the order passed by the Hon'ble High Court did not regularize his service and the claimant superannuated w.e.f 01.12.2011. The management by order dated 11.03.2011 issued a policy for regularization of casual workers as one time measure w.e.f 11.12.2006. But the claimant was unlawfully excluded on the ground that he was a work order and contractual basis employee.

Being aggrieved the claimant again approached the Regional Labour Commissioner New Delhi who calculated the dues payable by the management to the claimant. But for the non cooperation of the management the conciliation failed. The matter was then referred by the appropriate government to consider whether the claimant is entitled to regularization of service as a group D employee and if so from which date.

When notice of the dispute was served on the management it appeared and filed written statement. In the said written statement the management pleaded that the service of the workman was terminated w.e.f 03.03.1993 and the workman approached the tribunal where a direction was given to reinstate him in service w.e.f 01.03.1988 against the post of peon cum waterman as a regular employee and pay him the arrear back wages. The Hon'ble High Court of Delhi when approached by the management who filed WPC No. 6535 of 2005 the Hon'ble High Court came to hold that the claimant is not entitled to be regularized by the order of the tribunal. However, the management is directed to treat him as a daily rated worker and regularize his service as per their policy.

On 02.12.2002 a memorandum of understanding was entered between the management and Mazdoor Union. It was decided that the service of the casual workers shall be regularized as a onetime measure w.e.f 11.12.2006. Accordingly the office order dated 11.03.2011 (exhibit MW1/2.) was issued. As per that policy the workers who are duly qualified for the post and who have worked for more than 10 years as on 11.12.2006 were to be regularized. But the claimant was not considered for regularization since he

was not on the direct role of the management/ CPWD. It has further been stated by the management that for the order passed by the CGIT in Id Case No. 03/1998 the claimant workman was reinstated. But his case being a contractual employment was not considered for regularization. When the management approached the Hon'ble High Court in WPC No. 854/2012 the Hon'ble High Court stayed the order of the Labour Commissioner computing the total back wages and modified the same to 40% treating him as a daily rated worker. Then the management sought the approval of the competent authority for reinstatement into service. Though the appropriate authority approved the same the claimant filed to join yet. Thus the management has pleaded that in view of the orders passed by the Hon'ble High Court the claimant was offered to be reinstated but he did not join. Moreover, being a daily rated worker he is also not entitled to regularization as claimed by him. The management has thus, pleaded for dismissal of the claim. The claimant filed replication denying the stand of the management. He has also denied to be a daily rated worker. His one and only claim is that he was a casual employee and getting his salary as daily wager and the management for its delaying tactic deprived him of reinstatement and he attended the age of superannuation. On these rival pleadings the following issues are framed for adjudication.

ISSUES

1. Whether the claimant is entitled to be regularized in service as alleged.
2. Whether the petition is legally maintainable.

The claimant could not appear before this tribunal to testify for his ill health and hospitalization. After several adjournments made for the purpose the president of the Union representing the claimant recorded his statement. Besides the oral evidence he also filed a number of documents. On behalf of the management its executive engineer Deenbandhu Gupta testified as the management witness. He proved the office order and the policy for regularization so also the order of the Hon'ble High Court passed in WPC No. 6552 of 2012 wherein the calculation of back wages as directed by this tribunal was modified to 40%.

At the outset of the argument the Ld. A/R for the workman submitted that the management has admitted that the claimant was appointed as a daily rated worker w.e.f 01.03.1988. It is also admitted by the management that this tribunal found the termination of the claimant by the management to be illegal and directed reinstatement and regularization. However, the Hon'ble High Court modified the order of regularization and directed to consider this case when any scheme will be launched by the management for such regularization of the employees. On the other hand argument was advanced by the management to say that the Hon'ble High Court though upheld the finding of the tribunal for reinstatement of the claimant the finding was set aside in respect of the direction for regularization. The Hon'ble High Court had observed that when the management shall issue a policy for

regularization of casual workers as a onetime measure the candidature of the claimant can be considered. While pointing to the evidence of MW1 and the copy of the office order marked as MW1/2 he submitted that as a matter of policy the management decided to regularize the workers in their respective category w.e.f 11.12.2006 provided the candidate qualifies the terms of recruitment and has worked for more than 10 years as on 11.12.2006. But as per the policy the persons working on the work order and contractual basis cannot be considered. Thus, the claimant was rightly left out of the zone of consideration.

FINDING

It is the stand taken by the claimant that he was appointed as a peon cum waterman in Group D post as a daily rated worker w.e.f 01.03.1998. His service was illegally terminated w.e.f 03.03.1993. The order of termination having been set aside by the tribunal it is deemed that the workman was working since 01.03.1988 and on 11.12.2006 had completed 10 years of service making himself eligible for regularization but the management illegally kept him out of the consideration. The counter evidence adduced by the management is that a proposal for the regularization of muster roll/ hand receipt casual workers of CPWD was considered for regularization as a onetime measure in consultation with the ministry of UD and DOPT. Accordingly it was decided to regularize the service of the said eligible muster roll or hand receipt casual worker w.e.f 11.12.2006. An order to that effect was issued on 11.03.2011. By filing the copy of the order which has not been disputed by the claimant the Ld. A/R for the management argued that the said order clearly shows that the steps were taken for regularization of hand receipt and muster roll workers after testing their suitability. In the said order it was made clear that the persons working on work order or contractual basis shall not be considered for the purpose. Drawing the attention of the tribunal to Para 1 of the claim statement and the testimony of WW1 he submitted that as per the admission of the workman he was appointed as daily rated worker on work order w.e.f 01.03.1988. Thus, he is not entitled for regularization. He further argued that the claim petition and oral evidence is silent as to how the claimant fulfills the eligibility condition prescribed in the recruitment rule.

The documents filed by the claimant and marked as WW1/2 clearly negatives the stand of the claimant claiming regularization. The Ld. A/R for the claimant during argument drew the attention to exhibit WW1/1 which is the memorandum of understanding signed between the management and the union in presence of the Chief Labour Commissioner Central and argued that as per the said memorandum the management had agreed that the work order employees are daily rated workers. Hence, the denial to regularize the service of the claimant on the ground that he was a daily rated worker is illegal. But on perusal of the said memorandum marked as WW1/1, there is nothing to presume that the proposal/suggestion was carried out by the management. Thus, it is concluded that the claimant being a daily rated

worker on work order was not meeting the eligibility criteria for regularization of his service and the action of the management cannot be held as illegal or wrong. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant and he is held not entitled to the claim for regularization as stated in the claim petition. 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.
2nd June, 2022

Presiding Officer.
CGIT-cum-Labour Court.
2nd June, 2022