
(2013) 07 DEL CK 0238

In the Delhi High Court

Case No : Writ Petition (C) 6552 of 2012 and W.P. (C) 6806 of 2011

Director General (Works) CPWD

APPELLANT

Vs

Karam Singh and Others
 Baldev Singh and Another Vs
District Collection Officer/SDM

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)

Citation : (2013) 07 DEL CK 0238

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Rita Kaul, in W.P. C 6552 and 3524/2012 and Mr. Varun Prasad, in W.P. C 6806/2011, for the Appellant; Varun Prasad, for R-1 in W.P. (C) 6552 and 3524/2012, Mr. Amrit Pal, for R-2 and Mr. Mukesh Sharma, for R-3 in W.P. (C) 6552/2012, Mr. Pranay Jha, for R-4 in W.P. (C) 3524/2012 and Ms. Rita Kaul in W.P. (C) 6806/2011, for the Respondent

Judgement

A.K. Pathak, J.—By this order I shall dispose of above three writ petitions since all arise from the same Award dated 22nd February, 2006, inasmuch as, similar question of law is involved therein. Shri Baldev Singh, Shri Bal Kishan and Shri Karam Singh raised an industrial dispute which was referred to Central Government Industrial Tribunal (CGIT) in the following terms:-

Whether the action of the management of CPWD, Director General, CPWD, New Delhi in terminating the services of Sh. Baldev Singh S/o. Sh. Roshan Lal, Sh. Bal Kishan S/o Sh. Dhan Singh and Sh. Karam Singh S/o Sh. Samay Singh, Drivers w.e.f. 30.03.92, 30.09.93 and 16.10.93 is just, fair and legal? If not, what relief the concerned workman is entitled to and from what date?

2. Shri Baldev Singh, Shri Bal Kishan and Shri Karam Singh claimed that they were engaged by CPWD as Drivers on 11th February, 1988, 5th October, 1989 and 7th July, 1992 respectively for driving the Water Tanker on work order basis without stipulation of any specific period. They continued to perform their duties

uninterruptedly under the supervision and control of officers of the Horticulture Development Division-II, CPWD. They were paid minimum wages as that of a skilled worker fixed by the Govt. of NCT of Delhi from time to time. They were treated as daily rated workers on muster roll. They completed 240 days in a calendar year. All of a sudden their services were terminated illegally on 30th March, 1992, 30th September, 1993 and 16th October, 1993 respectively. They were neither given one month notice nor one month salary in lieu of the notice nor the compensation, gratuity etc.

3. Director General (Works), CPWD contested the claim of workmen. It was claimed that workmen were hired through the contractors. Workmen were hired as drivers on contract basis for a specific period. Accordingly, they were not entitled to one month's notice pay or compensation.

4. All the parties were afforded opportunity to lead evidence. Thereafter, Tribunal, on the basis of evidence adduced by parties, held that there was no evidence on record to show that the claimants (workmen) entered into any kind of contract with the management to drive the Water Tanker on contract basis. On the contrary, it was proved by the workmen that they were employed on work order basis without stipulation of any period. They were treated as daily rated workers. There existed relationship of employer and employee between the management and workmen. It was further held that they had worked for more than 240 days in a calendar year. Their termination was held to be illegal. Their reinstatement with 40 % back wages along with all consequential benefits from the date of their termination was ordered.

5. Management-CPWD preferred Writ Petition (Civil) No. 13733/2006 in this Court which was disposed of on 20th February, 2007. Writ petition was dismissed qua Shri Baldev Singh and Shri Bal Kishan. As regards Shri Karam Singh, the matter was remanded to Industrial Tribunal for redetermination on the point as to whether he had completed continuous 240 days of service. On remand, Tribunal held enquiry in this regard and after affording opportunity to the parties, vide Award dated 20th October, 2010, held that Shri Karam Singh had rendered 240 days of continuous service prior to his termination by the management. This finding was not assailed in the High Court.

6. In the Award Tribunal categorically held that workmen had been working with the management as daily rated worker and their existed relationship of employer and employee between them. It was held that they were not hired on contract basis. This finding of fact was not disturbed in W.P. (C) 13733/2006. In fact, Award was upheld on this point.

7. Labour Commissioner has calculated the wages in terms of Office Memorandum dated 21st October, 1990 applicable for daily rated worker. In W.P. (C) 6552/2012 the order passed by Labour Commissioner on an application under Sub-Section 1 of Section 33(C) of the Industrial Disputes Act, 1947 filed by Shri Karam Singh has been challenged by CPWD. Since wages have been

calculated in terms of the Award and the amount has been quantified as Rs. 9,35,034/- in terms of the office memorandum, inasmuch as, no calculation error could be pointed out during the course of hearing challenge is unsustainable. The only grievance of the CPWD is that Shri Karam Singh was working on contract basis, thus, his wages could not be calculated as that of daily rated workers in terms of the aforesaid office memorandum I do not find any force in this contention of learned counsel, inasmuch as, the Award having attained the finality whereby Shri Karam Singh, Shri Baldev Singh and Shri Bal Kishan have been held to be daily rated worker CPWD cannot persist to say that these workmen were contractual employees. In W.P. (C) 3524/2012 notice bearing No. ND/17/M-28/2006-B-II dated 27th March, 2012 has been challenged with regard to Shri Baldev Singh and Shri Bal Kishan on the same ground which is untenable since Award has already attained finality. Wages have been calculated in terms of office memorandum.

8. In view of the above discussions, WP (C) no. 3524/2012 and WP(C) no. 6552/2012 are dismissed.

9. As regards W.P. (C) 6806/2011 is concerned, same is allowed and respondent is directed to proceed with recovery of amounts due under the impugned recovery certificate No. ND/17/M-28/2006 and pay the same to petitioners. It is further ordered that amounts lying deposited in this Court in W.P. (C) 6552/2012 be released along with interest accrued thereon, if any, to workman Karam Singh forthwith.