# IN THE COURT OF SH. CHANDRA GUPTA: PRESIDING OFFICER INDUSTRIAL TRIBUNAL, DWARKA COURTS, NEW DELHI

### I.D. No. 508/16 (Old No.539/12)

#### Workmen

Through Progressive National Labour Union, 205, Pratap Khand, Vishwakarma Nagar, Delhi 110095

Vs.

#### Management

M/s Frigori Fico Allana Ltd. MCD Slaughter House, Gazipur, Delhi 110096

Date of institution 26.10.2012
Date of reserving award 17.02.2018
Date of award 20.03.2018

Ref: F.24 (86)/Lab./ED/2012/2966 dated 15.10.2012

# $\underline{A \ W \ A \ R \ D}$

1. Workmen have raised the present industrial dispute through Union against the management and on failure of conciliation proceedings, GNCT of Delhi referred the dispute to this Tribunal for adjudication in following terms of reference:-

"Whether the demands of workmen for:-

(a) Bonus @ 20% for the financial year 2010-11 and 2011-12

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- (b) Annual increment @ 10% per annum from January, 2012
- (c) House Rent Allowance @ 2500/- per month from January 2012
- (d) Transport Allowance @ 1000/- per month from January 2012
- (e) Tea Allowance @ 500/- per month from January 2012
- (f) Two pair of warm and cotton clothes each per annum from year 2012.
- (g) Washing Allowance @ 500/- per month from January 2012
- (h) Interest free loan of Rs.25,000/- with repayment installment @ Rs.1500/- per month are fair and justified and if yes, to what relief are they entitled?"
- 2. In the statement of claim filed on behalf of the workmen, it has been stated that the work of animal slaughtering has been given to the management at MCD Animal Slaughtering House, Gazipur, Delhi 110096 and the management is service provider company and the workers have been appointed by the management for the work of animal slaughtering; that the workmen are members of the union; that the management deprived the workmen of all basic labour facilities and when despite repeated requests the management did not provide any facility to the workmen, the workmen after holding a meeting, sent a demand notice dated 04.08.2012 in respect of their general demands to the management by speed post, but the management totally ignored the same and did not reply to it; that the union raised a dispute in respect of 19 general demands

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of the workmen before the conciliation officer; that the conciliation officer called the management repeatedly to discuss the matter in this regard but due to uncooperative attitude of the management, labour conciliation officer sent the following 08 demands to this tribunal for adjudication:

- (1) That workmen be granted Bonus @ 20% for the financial year 2010-11 and 2011-12
- (2) That workmen be granted Annual increment @ 10% per annum from January, 2012
- (3) That workmen be granted House Rent Allowance
- @ 2500/- per month from January 2012
- (4) That workmen be granted Transport Allowance
- @ 1000/- per month from January 2012
- (5) That workmen be granted Tea Allowance @ 500/- per month from January 2012
- (6) That workmen be granted Two pair of warm and cotton uniform each from January 2012.
- (7) That workmen be granted Washing Allowance @ 500/- per month from January 2012
- (8) That workmen be granted Interest free loan of Rs.25,000/- with repayment installment @ Rs.1500/-per month
- 3. It is prayed that the award be passed in favour of the workmen against the management, thereby granting abovesaid demands, to the workmen.
- 4. In the written statement filed by the management, it is stated that there is no employer and employee relationship between the parties; that the claimants are not workmen as defined u/s 2(s) of Industrial Disputes Act, 1947 (as amended upto date); that it is not an industrial dispute in as

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much as there is no proper espousal by the union who has raised the instant industrial dispute; that the union is not recognised union and thus, is not competent to raise the instant industrial dispute; that the management has engaged several contractors to discharge its duties and the workmen at best could be the employees of any one of the contractors; that the management is paying much more than the Minimum Wages as revised from time to time by the appropriate government to the contractors and it is the contractors who pays salaries to its employees; that the management is not liable to pay any Bonus to the claimants; that the management provides the requisite uniform required for discharging the duties at the sites of the employment itself; that the uniforms provided by the management are washed/ cleaned by the management itself and cost of the washing of the same is borne by it and thus the demand of washing allowance of Rs.500/- pm is illegal and unjustified; that there is no provision of law under which the management is under an obligation to provide interest free loan of Rs.25,000/- to the claimants. All other demands raised in the statement of claim have been denied and dismissal of the same has been prayed for.

5. Rejoinder has been filed on behalf of the workmen to the written statement of the management, wherein the workmen have denied all the

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averments made in the written statement and has reiterated the contentions made in the statement of claim.

- 6. On the basis of pleadings of the parties, following issues were framed vide order dated 19.08.2013:-
  - Whether there is relationship of employer and employee between the parties?
     OPW
  - 2. Whether claimants are workmen as defined u/s 2(s) of Industrial Disputes Act?

    OPW
  - 3. Whether present dispute is an Industrial Disputes as defined in section 2(k) of Industrial Disputes Act? OPW
  - 4. Whether the present claim of the workmen has been properly espoused by the Union? OPW
  - 5. Whether the workmen union is recognized union and is competent to raise the present industrial dispute? OPW
  - 6. As per terms of reference.
- 7. Workman Sh. Ved Prakash examined himself as WW 1. In his examination in chief by way of his affidavit by way of evidence Ex. WW 1/A, he has deposed that he had been continuously working since 10.12.2009 as Skilled Buchad in Gazipur Animal Slaughter House at the

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last drawn salary of Rs.8,000/- pm; that the said slaughtering house was run by MCD earlier and later on MCD gave its contract to the management on lease through which he was appointed; that the abovesaid company deprived of the workmen of legal facilities and despite repeated oral requests the same was not being provided to the workmen and having been constrained from the same, workmen through union made a complaint dated 20.06.2012 to Labour Office, Vishwakarma Nagar. The witness has relied upon documents Ex. WW 1/1 to Ex. WW 1/4 in this regard; that the present dispute was referred to this tribunal for adjudication; that despite pendency of the dispute, he was terminated from his services by the management on 27.12.2012 in violation of Section 33(1) of Industrial Disputes Act, 1947; that the workman gave application dated 07.01.2013 to Hon'ble Court in this regard, but the management did not reply to the same; that the management terminated the services of the workmen despite pendency of industrial dispute in violation of Section 33 (1) of Industrial Disputes Act, 1947; that the workmen are entitled to reinstatement with wages for the said period alongwith all benefits;

In cross examination, he has deposed that he was appointed on 10.08.2009 that he was working as a Butcher; that he was paid Rs. 8,000/-per month; that he was not given any appointment letter at the time of his

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appointment; that he does not have any document which could show that he was working with M/s Frigorifico Allana Ltd; that it is wrong to suggest that he was working through a contractor. Vol. The contractor came into picture in year 2010; that the name of the contractor was Sh. Joginder Pal; that he was initially appointed by the MCD; that later, he was appointed by M/s Frigorifico Allana Ltd; that subsequently, he was appointed by M/s Pal Enterprises; that it is wrong to suggest that there is no employer and employee relationship between M/s Frigorifico Allana Ltd. and him; that he joined the Progressive National Labour Union on 28.07.2012; that he used to pay Rs. 5/- per month as subscription towards membership of union; that he has deposited the subscription towards membership of union upto May, 2014; that he is being given receipt of payment of subscription by the union; that he can produce the receipts of his monthly subscription paid by him from time to time; that he searched for receipts of his monthly subscription paid by him to the union but he could not find the same; that it is wrong to suggest that he has never given any subscription to the union; that it is wrong to suggest that he is not the member of Progressive National Labour Union; that there are about 22-23 Butchers who are working in management who are members of the union; that it is wrong to suggest that there are no Butchers working on the roll of

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management; that it is wrong to suggest that there was no espousal or meeting convened by the union with respect to the present industrial dispute; that it is wrong to suggest that he has not stated even a single word about the general demands in the affidavit filed in lieu of examination in chief; that he knows that contractor has not been made a party in the present dispute; that it is wrong to suggest that he has deliberately not made contractor a party; that it is correct that he used to get uniform when he used to work with management; that he was given uniform by the officials of the management; that he does not know as to whether there is any claim in the statement of claim with respect to uniform allowance; that he used to get washed uniform every day; that he has not been working anywhere for the last two years because he is suffering from high blood sugar; that it is wrong to suggest that his claim is false; that it is wrong to suggest that he is deposing falsely.

8. Workman Sh. Sanjay examined himself as WW 2. In his affidavit by way of evidence by way of examination in chief he has deposed on the same line as of WW 1 and has relied upon the documents Ex. WW 2/1 to 2/4, which are the same documents as relied upon by WW 1.

In his cross examination, he has deposed that he was appointed in

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the year 1995 at Idgah; that he was transferred from Idgah to Gazipur on 2.6.08; that he was working as Butcher; that he was being paid Rs.400/per day by MCD; that as per him, he is working under the management since 10<sup>th</sup> August, 2009; that he was not given any appointment letter by management; that he does not have any document to show that he is an employee of M/s Frigori Fico Allana Ltd; that it is wrong to suggest that he was working under a contractor; that in the year 2009 he was being paid salary by an official of the management; that he does not remember the name of the official who used to pay him salary in the year 2009; that it is wrong to suggest that he was being paid salary by a contractor and not by the management; that Joginder is a Butcher who used to supervise them; that it is wrong to suggest that Joginder was a contractor and he was working under him; that it is wrong to suggest that there is no employer employee relationship between the management and him; that he does not know any contractor by the name of M/s Pal Enterprises; that he joined the Progressive National Labour Union in March, 2012; that he used to pay Rs.5/- pm as subscription towards union's membership and used to get the receipt; that he cannot produce the said receipts; that it is wrong to suggest that he is not member of the Union; that there are 37 Butchers who are employees of the management who are the members of the union;

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that as per him, there were around 37 Butchers on the roll of the management; that it is wrong to suggest that there are no Butchers on the roll of the management and all the Butchers are working through contractors; that he does not remember the date on which the union's meeting with respect to espousal of the present claim was convened; that it is wrong to suggest that no such meeting was ever convened; that he has gone through the contents of his affidavit which he has filed before this court in lieu of examination in chief; that it is correct that contractor has not been made a party in the present industrial dispute; that it is wrong to suggest that he has deliberately not made the contractor as party; that it is correct that he used to get uniform when he used to work with management; that he was given uniform by the officials of the management; that he does not know as to whether there is any claim in the statement of claim with respect to uniform allowance; that he used to get washed uniform every day; that he is not employed anywhere these days; that his household expenses are met by his brothers; that it is wrong to suggest that he is gainfully employed; that it is wrong to suggest that his claim is false; that it is wrong to suggest that he is deposing falsely.

9. WW 3 Sh. Bhagat Singh General Secretary of Progressive National Labour Union by way of his affidavit by way of evidence Ex.

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WW 3/A has reiterated the contents of statement of claim and has relied upon the documents exhibited by WW 1 in his examination in chief. No cross examination of this witness has been conducted on behalf of the management despite opportunity given for the purpose.

10. MW 1 Sh. Ashfaque Manzer, Manager (HR) of the management in his affidavit by way of evidence by way of examination in chief has reiterated the contents of WS filed on behalf of the management in the instant industrial dispute.

In his cross examination, he has deposed that he has received a letter from the Management when he was appointed as Manager (HR); but that day, he has not brought the same. Volunteered he can produce the same, if required; that he was authorized by the General Manager to file his affidavit in the evidence of Management being Manager (HR); that he does not know as to how he was authorized by the General Manager to file his affidavit in the evidence of the management and he does not know whether the decision was taken in the meeting of Board of Directors of the Management; that the workmen are not working directly under him; that at present, 138 workmen are working with the Management; that the record of the workmen who are involved in this case are not maintained by the Management; that he has bought that day his authorization letter,

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copy of his appointment letter with the management and copy of certificate of registration of the management with competent authority under the provisions of Section 7 (2) of the Contract Labour (Regulation and Abolition) Act, 1970 Exbts MW 1/W1, MW 1/W2 and MW 1/W3 respectively; that there are 134 regular employees of the management and 370 employees on contract basis; that all the employees are admitted to Bonus ,EPF and ESI facilities; that increment in wages is also being given to the employees by the management; that it is correct that uniform is being provided to the employees/workmen; that it is wrong to suggest that the affidavit which he has filed is false and the statements made therein are incorrect; that is wrong to suggest that he was deposing falsely. Thereafter management evidence was closed.

11. I have heard arguments from the parties and have carefully gone through the record of the case. My findings on the issues are as follows:-

### 12. Findings on issue no.1

Issue no.1 is: Whether there is relationship of employer and employee between the parties? OPW

13. It is seen from the record that no document has been proved on the part of the workmen to establish factum of relationship of employer and employee between the workmen and the management in the instant

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dispute, existence of which factum has been denied by the management in its WS filed in opposition to the instant statement of claim filed on behalf of the workmen to the effect that the workmen who have raised the instant industrial dispute through the purported union are not the employees of the management; that the management has engaged several contractors to discharge its duties and, therefore, the workmen at best could be employees of anyone of the contractors and, therefore, there is no employer employee relationship between the management and the workmen aforesaid.

14. It is further seen from the record that only documents proved in the evidence of WW 1 Sh. Ved Prakash and WW 2 Sh. Sanjay, alleged workmen working as Buchors with the management at its premises at the MCD Animal Slaughter House at Gazipur, Delhi 110096 are complaint dated 18.06.2012 of the alleged union of the workmen to the Asst. Labour Commissioner, Labour Department, Vishwakarma Nagar, Delhi 110095 in respect of non payment of minimum wages as also other legal facilities to the workmen on the part of the management, their alleged employer (Ex. WW 1/1 as also Ex. WW 2/1), legal notice dated 04.08.2012 by the alleged union of the workman to the management on their behalf in respect of non provision of the legal facilities/ entitlements of the

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workmen i.e. charter of general demands on behalf of the workmen as mentioned therein to them on the part of the management (Ex. WW 1/2 as also Ex. WW 2/2), copies of postal receipt dated 04.08.2012 in its respect (Ex. WW 1/3 as also Ex. WW 2/3), and copy of statement of claim filed on behalf of the workmen before conciliation officer (Ex. WW 1/4 as also Ex. WW 2/4), on record, which do not in any manner go to establish the factum of existence of relationship of employer and employee between the workmen and the management. It is seen from the record that no direct evidence in this regard by way of any appointment letter, payment of wages/ salary on the part of the management to the workmen, record of attendance of the workmen on their duties with the management in the shape of attendance register/sheets/muster rolls alongwith record of any statutory deduction towards ESIC and EPF on the part of the management in respect of the services of the workmen with it to the concerned authorities has been proved on the part of the workmen qua the management, on record, to establish their claim of being its employees in the face of the denial of the factum of existence of relationship of employer and employee between the parties on the part of the management in its WS in opposition to the statement of claim filed on behalf of the workmen in the instant industrial dispute, as abovesaid, as

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also by way of cross examination of WW 1 Sh. Ved Prakash and WW 2 Sh. Sanjay on behalf of the management in WE in this regard in which it is seen from the record that it has been admitted by WW 1 Sh. Ved Prakash, the alleged workman of the management that he does not have any document which could show that he was working with M/s Frigori Fico Allana Ltd. i.e. management as also that contractor came into picture in the year 2010; that name of the contractor was Sh. Joginder Pal; that he was initially appointed by the MCD; that later he was appointed by M/s Frigori Fico Allana Ltd; that subsequently, he was appointed by M/s Pal Enterprises as also WW 2 Sh. Sanjay the alleged workman of the management has admitted in his cross examination on behalf of the management in WE that he does not have any document to show that he is employee of M/s Frigori Fico Allana Ltd. i.e. management.

15. It is seen further seen from the record that the management has led the evidence of its Manager (HR) Sh. Ashfaq Manzar who has appeared as MW 1 in management evidence and who has deposed by way of his affidavit by way of evidence Ex. MW 1/A in management evidence that there is no employer and employee relationship between the parties; that since the workmen, who have raised the aforesaid dispute through the Progressive National Labour Union, are not employees of the

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management aforesaid, the present claim/ dispute is not maintainable in law; that the present dispute is not an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947 inasmuch as there is no valid espousal by the claimant union; that the workmen who have raised the present dispute through the Progressive National Labour Union are not the employees of the management aforesaid and there is no employer employee relationship between the said workmen and the management aforesaid; that therefore the aforesaid union is incompetent to raise the present dispute/claim; that the claims/demands as raised by the aforesaid union are illegal/unlawful, unjustified and untenable in law; that the demand of bonus, 10% annual increment, leave allowance, traveling allowance, tea expenses, uniforms, washing allowance, interest-free loan, etc is misconceived inasmuch as the workmen, who have raised the present dispute through the Progressive National Labour Union, are not the employees of the management aforesaid and there is no employer and employee relationship between the said workmen and the management aforesaid; that the claim of the aforesaid union pertaining to bonus is unlawful, unjustified and untenable in law inasmuch as the claim pertaining to bonus cannot be adjudicated as an industrial dispute under the Industrial Disputes Act, 1947; that the management aforesaid has

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engaged several contractors to discharge its duties and, therefore, the workmen at best could be the employees of any one of the contractors and there is, therefore, no employer employee relationship between the management aforesaid and the workmen of the aforesaid union; that the management aforesaid is paying much more than the minimum wages, as revised from time to time by appropriate government, to the contractor and it is the contractor who pays/disburses the salary to its employees; that the claim pertaining to bonus, 10% annual increment, leave allowance, traveling allowance, tea expenses, uniforms, washing allowance, interest free loan, etc. can be attributed to the contractor, who has deliberately not been made a party in the present dispute by the aforesaid union. MW 1 has proved copy of his authorisation letter that authorises him to depose on behalf of the management as Ex. MW 1/W1, copy of his appointment letter with the management as Manager (HR) as Ex. MW 1/W2 and copy of certificate of registration of the management with competent authority under the provisions of Section 7(2) of Contract Labour (Regulation and Abolition) Act, 1970 and the rules made thereunder as Ex. MW 1/3, from which it is evident that the management is a registered principal employer under the provisions of section 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970 with the registering authority for employing

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labour on contract basis for the work of animal slaughtering (Buffalow and Sheep) at its premises as mentioned therein with the list of contractors supplying labour on contract basis to the management for various services including animal slaughtering at the premises of the management annexed thereto, to which there is no rebuttal on the part of the workmen in the cross examination of MW 1 in management evidence, on record.

16. In view of above discussion I find that the workmen having not been able to discharge the onus which was upon them in respect of the instant issue i.e. existence of factum of relationship of employer and employee between the parties in the face of denial of the same on the part of the management, the same is decided against the workmen and in favour of the management.

### 17. Findings on issue no. 2

Issue no.2 is "Whether claimants are workmen as defined u/s 2(s) of Industrial Disputes Act? OPW"

18. It is seen from the record that there is no denial on the part of the management to the assertion of the WW 1 Sh. Ved Prakash and WW 2 Sh. Sanjay by way of their affidavits by way of evidence of evidence Ex. WW 1/A and Ex. WW 2/A in workmen evidence that they were working

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as Butchers on the salary of Rs.8,000/- at MCD Animal Slaughter House, Gazipur, Delhi in their cross examination on behalf of the management in workmen evidence, the claim of the management in opposition to the claim of the workmen in the instant industrial dispute being that they were not the workmen of the management and accordingly claimants are held to be workmen under the provisions of Section 2(s) of the Industrial Disputes Act, 1947. This issue is decided accordingly.

## 19. **Findings on issue nos.3,4, and 5**

Issue no.3 is "Whether present dispute is an Industrial Disputes as defined in section 2(k) of Industrial Disputes Act? OPW"; issue no.4 is "Whether the present claim of the workmen has been properly espoused by the Union? OPW" and issue no.5 is "Whether the workmen union is recognized union and is competent to raise the present industrial dispute? OPW". These issues are interconnected and thus, are taken up together.

20. It is seen from the record that no evidence whatsoever has been led on the part of the workmen by way of evidence of WW 1 Sh. Ved Prakash, WW 2 Sh. Sanjay and WW 3 Sh. B.S. Rawat, General Secretary of Progressive National Labour Union (Regd.) the alleged union of the workmen that the same is registered union or that case/claim of the workmen in respect of their general demands vide the terms of reference

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of the appropriate government in the instant industrial dispute between the parties in respect whereof the instant statement of claim has been filed on behalf of the workmen in the same, on record, has been properly espoused by the Progressive National Labour Union, the alleged union of the workmen, by way of any resolution of the general body of the said union passed in this regard or even minutes of such meetings of the same held in this regard as no such evidence has been proved on record and on the contrary it has been admitted by WW 1 Sh. Ved Prakash in his cross examination on behalf of the management in workmen evidence that *he had searched for receipts of his monthly subscription paid by him to the union but he could not find the same* and by WW 2 Sh. Sanjay in his cross examination on behalf of the management in workmen evidence that *he does not remember the date on which the union's meeting with respect to espousal of the present claim was convened*.

21. In view of no evidence having been led on behalf of the workmen that the instant dispute qua their general demands as contained vide the terms of reference of the appropriate government in respect of the same against the management is properly espoused by the union of the workmen viz. Progressive National Labour Union in order for the same to qualify as an industrial dispute as defined under the provisions of section

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2(k) of the Industrial Disputes Act, 1947 (as amended upto date) for the purpose of its adjudication and disposal in accordance with law on the part of this tribunal, the instant issues viz. issue nos.3,4, and 5, as abovesaid, are decided against the workmen and in favour of the management.

## 22. <u>Findings on issue no.6</u>

Issue no.6 is "As per terms of reference."

In view of my findings on issue nos.1,3,4 and 5, as abovesaid, issue no.6 i.e. "As per terms of reference" in respect of the entitlement of the workmen to their general demands against the management as mentioned in the terms of reference of the appropriate government in the instant dispute between the parties has become redundant and accordingly it is held that the workmen are not entitled to any relief in the instant reference.

- 23. Award is passed accordingly and reference is answered in these terms.
- 24. Copy of this award be sent to GNCT of Delhi for publication. File be consigned to the Record Room.

Announced in open Tribunal on 20.03.2018

(CHANDRA GUPTA)
Presiding Officer, Industrial Tribunal
Dwarka Courts, New Delhi.

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