

(1999) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 623 of 1998

Amar Singh

APPELLANT

Vs

Cement Corporation of India and Others

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 LLJ 1030 : (1999) 2 ShimLC 1

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : A.K. Gupta, for the Appellant; K.D. Sreedhar, to 3 and Rajnish Maniktala, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pantia, J.—This writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking inter alia the following reliefs:

(i) That the respondent-Company may be ordered to regularise the services of the petitioner from the date of the publication of the award and treat him as a departmental labour in the lowest grade with all the benefits incidental thereof such as full back wages at par with the regular departmental labour from the date of publication of award in the Gazette of India;

(ii) That the respondent-Company may be ordered to absorb the petitioner as a departmental labour/regular mazdoor in the lowest grade with effect from the date of publication of award with all the consequential benefits thereof; and further that any other relief to which the petitioner may be found entitled may also be granted.

2. The petitioner has alleged that he was engaged as a mechanical labourer/ Mazdoor with effect from February 18, 1981 in the Cement Corporation of India (CCI), Rajban, District Sirmour and he is working under contractor Shri

Sachidanand-respondent No. 2. He has been performing and discharging his duties and functions to the satisfaction of the respondents and no complaint whatsoever nature was made against his working. It is then alleged that he is discharging all the duties as has been discharged by the regular labour/Mazdoor in his cadre but still he is being employed on daily waged basis inspite of the award made by the Wage Board long back and the recommendations which were published in the year 1983 vide Gazette of India marked with this writ petition as Annexure P-1. It is further contended that the award is very clear on the point that except in the case of "loading and unloading", the contract labour system stood abolished and further, if any, contract labour was employed, it would amount to unfair labour practice but inspite of the recommendations of the Wage Board which are binding upon the management and the workers, the respondent-CCI is still floating the recommendations of the Wage Board and persisting in the practice of keeping the workmen on contract basis. The petitioner also alleged that the respondent-CCI is acting rather otherwise against the workmen who are serving in the "loading and unloading" and are being paid at par with the regular Mazdoors and the other perks such as bonus, etc. from the date of the said recommendations but the petitioner has been deprived of the said benefits and is thereby discriminated. The petitioner alleged that he has made several representations through union to the authorities concerned but so far no action has been taken and he is still being employed on the contract basis which is unjustified and amounts to unfair labour practice. The petitioner next alleged that he is the employee of the principal employer, namely, C.C.I. and the respondent-CCI cannot escape the liability of absorbing the petitioner as departmental labour to the lowest grade of the Mazdoors i.e. E-grade and the respondent-CCI is under legal duty to pay all service allowances to the petitioner at par with the department labour from the date of publication of the Wage Board Award in the year 1983.

3. Both the respondents have filed separate sets of replies. The respondent-CCI has filed its reply denying the claim made by the petitioner. It has raised five preliminary objections, namely, (i) that the writ petition is not maintainable as the petitioner has raised highly disputed questions of facts which cannot be adjudicated upon by this Court in exercise of its extra-ordinary writ jurisdiction and that the petitioner has an alternative efficacious remedy available to him under the relevant provisions of the Industrial Disputes Act, 1947 and the Contract Labour (Regulations and Abolition) Act, 1970 which he has not exhausted; (ii) that the petitioner is not an employee of the respondent-CCI and in fact, he is the employee of the respondent-Contractor. The responsibility of the respondent-CCI is only to the extent that the Contractor would pay the wages in accordance with the provisions of Contract Labour (Regulation and Abolition) Act, 1970; (iii) that the petitioner is an employee of respondent- Contractor and the said Contractor is engaged by respondent-CCI for execution of the work permissible under the Exception Clause of Arbitration Award, 1983 and the role of the respondent-CCI is restricted only to the extent of supervisory control over

the respondent-Contractor. It is alleged that the respondent-CCI has always ensured that the Contractor makes payment to his labour strictly in accordance with Rules, Regulations and provisions of the Act; (iv) that the respondent-CCI has no specific information about petitioner's engagement by respondent-Contractor; and (v) that the issue which has been raised by the petitioner has also been the subject-matter of an earlier writ petition Nos. CWP No. 136/98 and CWP No. 498/97 decided by the Division Bench of this Court on May 25, 1998 and whether the petitioner was employed within the exceptions clause or not, it involved determination of question of fact, which could not be gone into by this Court in its exercise of writ jurisdiction. It is submitted that the matter in controversy was directly and substantially in issue of the earlier writ petitions which were dismissed and as such the present writ petition is not maintainable.

4. On merits, it is denied that the payment of daily wages are being made by respondent-CCI to the labourers employed by the respondent-Contractor. The respondent-Contractor is given work orders for various types of civil jobs of casual nature and it is for the Contractor to employ workmen and other staff for execution of such work orders and the petitioner is discharging duties for respondent-Contractor as and when engaged by him and not for the principal employer. The principal employer in such works has a limited role and that is, overall supervision and implementation of relevant Acts, Rules, instructions, etc. The respondent-CCI has placed on record true copies of work orders awarded to respondent-Contractor during the month of January 1997 and July 1996 marked Annexures R-1/1 and R-1/2. Respondent-CCI admitted that the award was announced by the Arbitrators in the matter of "Industrial Dispute between the workmen and the Cement Industry and the employers in the Cement Industry" and the same was published vide Ministry of Labour Notification dated July 18, 1983, a copy of which is placed on record and marked Annexure R-1/3. Respondent-CCI contended that from the perusal of para 164 of the award it will be clear that contract labour system had not been completely abolished in the Cement Industry. It is alleged that the petitioner being employed on a job of temporary/casual nature to be performed by the respondent- Contractor is excluded, from the coverage of the recommendation of the award contained in paras 50 and 51 thereof and as such he is not entitled to any benefit under the award. It is stated that the petitioner being casual employee of respondent-Contractor cannot be equated with the regular Mazdoors of respondent-CCI. The qualification, job experience, responsibility and nature of job performed by a regular mazdoor are not the same as are performed by casual labour or a contractor and they are distinct from each other and that there is absolutely no comparison or similarity between the two classes of employees. It is also stated that the wages of the daily/casual workers are paid by the Contractor in accordance with the minimum wages notified vide Notification No. Shram (A) 27/93-II dated February 28, 1996 issued by the State of Himachal Pradesh and copy of the same is marked as Annexure R-1/4. The Respondent-CCI in the end prays for dismissal of the writ petition.

Respondent-Contractor in his reply raised three preliminary submissions, namely, that the petition is not maintainable as it involves determination of highly disputed question of facts, which cannot be adjudicated upon by the Court in exercise of its extra-ordinary jurisdiction. It is submitted that the petitioner is not the employee of respondent-CCI but has been engaged by respondent-Contractor for carrying out various temporary jobs of intermittent nature, whenever these occur and the works are handed over to him. Thus, as and when necessity arises, respondent-Contractor engages the required number of workmen for carrying out various work orders and as such, the question as to the employment of the petitioner by respondent-CCI or respondent-Contractor is contested by the parties and being disputed question of facts which cannot be determined in this writ petition. It is also submitted that otherwise also, the petitioner has an efficacious remedy under the relevant provisions of the Industrial Disputes Act which has not been exhausted by him. It is next submitted that the point in issue in the present writ petition is directly covered by common judgment of the Division Bench of this Court in CWP Nos. 136/98 and 498/97 decided on May 25, 1998 and in view of that decision, the present writ petition is not maintainable and deserves to be dismissed. On merits, the respondent-Contractor alleged that the petitioner was engaged by him on daily wages of Rs. 53/- w.e.f January 1993 and he has no knowledge as to what wages are being paid to other workmen who are regular employees of the respondent-CCI and that the allegation of the petitioner that he was engaged on February 18, 1991 is categorically denied. However, it is admitted that an Arbitration Award was passed between the Cement Manufacturers Association and the Employees' Union and from the careful reading of the said award, it will be seen that there are two exceptions in the award where respondent-CCI can employ contract labour. These two exceptions are "construction work and works of purely temporary nature, not connected with manufacturing process. "It is further submitted that the respondent-Contractor is given various work orders by the Electrical and Mechanical Engineering Department of respondent-CCI after evaluation of the monthly needs of various works of temporary nature. Respondent-Contractor has placed on record copies of two work orders marked Annexures R-2/1 and R-2/2 and further submitted that engagement of workmen, including the petitioner depends upon the work orders issued to him and that the services of the workmen are engaged as and when these are required. It is further submitted that there is no regular work which can be given to the workmen and as such the petitioner does not have a regular attendance in every month. It is again emphasised that the respondent-Contractor has been executing the works such as cleaning of water tanks, cleaning of roofs, cleaning of drains as and when there is requirement, cleaning of Packing House and cleaning of Kiln, which is again not a regular phenomenon, etc. and the said tasks are not of regular nature but as and when itself anticipated by respondent-CCI, the work orders are issued in favour of respondent- Contractor to be executed by him. It is denied that the petitioner is entitled to the salary being given to the regular employees of respondent-CCI. On these premises, the

respondent-Contractor prays for dismissal of the writ petition.

5. Rejoinder-affidavits were filed by the petitioner reiterating his averments made in the writ petition and controverting the allegations made in the replies of the respondents. It is further alleged in the rejoinder filed to the reply of respondent- Contractor that the job of the petitioner is directly connected with the manufacturing process because he is serving as a labourer in the mechanical side for the cleaning of the machinery/repair of the machinery, etc. It is further alleged that the respondents are paying all perks such as bonus, etc. and other benefits to the labourers at par with the regular labourers in loading and unloading section @ Rs. 195/- per day while the petitioner is getting only Rs. 53/- per day. The petitioner has also filed an application being CMP No. 1528/98 u/s 151 of the CPC for taking additional documents on record which are annexed with the said application and one of the document is attendance register of workmen for the month of January 1986 (Annexure PA) in which the name of the petitioner appears at serial No. 6 and the second document is a certificate issued by respondent-Contractor dated January 22, 1998 marked Annexure PB certifying that the petitioner has been working under him as supply labour in the mechanical section.

6. Mr. A.K. Gupta, learned Counsel appearing on behalf of the petitioner made his submission on the basis of the averments reflected in the writ petition. He urged that the petitioner cannot be said to be a temporary employee because he has been working with respondent-CCI since 1981 and till the factory is in existence, the work of the respondent-CCI is not temporary, the wages are being paid to the petitioner and other daily wagers under the guidance of respondent-CCI and the petitioner is working for the benefit of the said respondent. He next contended that the petitioner is involved in manufacturing process and his job is not of a temporary nature but it is permanent one and, therefore it is not permissible to the respondents to say that the petitioner is working on daily wage or casual work. He also contended that the petitioner is squarely covered under the Wage Board Award which was accepted by the Government of India and published in the official Gazette and, therefore, for all intents and purposes, he is the employee of the principal employer i.e. respondent-CCI and he has to be regularised by the said respondent-CCI in its factory. He also contended that under the award except in "loading and unloading" section the labour contract system has been abolished and that even if the work is of temporary nature but connected with the manufacturing process, the respondent-CCI has no other alternative but to absorb the petitioner in its establishment and pay him regular wages at par with other regular employees of the respondent-CCI. In the last, he contended that the respondent-CCI itself is flouting and contravening the terms and conditions of the award by paying higher wages to the labourers employed in "loading and unloading" section and showing the hostile discrimination to the petitioner and further that the petitioner is entitled to wages and other benefits being paid to the regular employee from the respondent- CCI from the date of the decision of the award and permanent absorption in Grade-E. In support of his

submissions, the learned Counsel has placed reliance on two judgments of the Apex Court in Sankar Mukherjee and Others Vs. Union of India (UOI) and Others, Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled],

7. Per contra, Mr. K.D. Shreedhar contended that the petitioner is not engaged by respondent-CCI and he is doing the work for respondent-Contractor and under no circumstances the petitioner can be said to be a workman of the principal employer. He also contended that the work entrusted to the respondent-Contractor is of temporary nature and not connected with the manufacturing process and, therefore, the works against which the petitioner is working under the respondent-Contractor is excluded from the coverage of the award. He further contended that "loading and unloading" work in the respondent-CCI is being carried by the regular staff of the company itself and no work of this nature has been assigned to any contractor and that the controversy involved in the present writ petition has been set at rest by the Division Bench of this Court in two writ petitions No. 498/97 and 136/98 decided on May 25, 1998 and, therefore, the present writ petition has no force which deserves to be dismissed.

8. Mr. Rajnish Maniktala, learned Counsel appearing on behalf of the respondent-Contractor contended that the petitioner was engaged on daily wage by respondent-Contractor in January 1993 for doing the temporary work allotted to him by respondent-CCI. He next contended that the certificate Annexure PB annexed with the application issued by respondent-Contractor on November 22, 1998 will prove that the petitioner has been working under 2nd respondent as supply labour in the mechanical section and it does not prove that the petitioner has been working with the respondent- Contractor since February 18, 1981 in the manufacturing process.

9. Before dealing with the rival contentions of the respective parties certain facts have to be noted for the purpose of understanding the case well. In para-225 of the Notification (Annexure P-1), the Arbitrators observed as under:

"225. In our earlier award dealing with the subject of abolition of contract labour, the CMA took the same stand saying that we have no jurisdiction to direct abolition of contract labour after the Contract Labour Abolition and Regulation Act had come into force. The matter was argued before us at great length and finally we gave our award, which reads:

164. The aforesaid unanimous recommendations of the First Wage Board to which labour and management in the industry are parties have been accepted by the Government and implemented by the industry by and large from 1960. Therefore, contract labour stands abolished by the unanimous recommendations of the Wage Board as far back as 1960 in all occupations, except unloading, loading and packing. It has also been settled finally by the Wage Board and accepted by the Government and the industry that contract labour wherever employed should get the same rates of wages, allowances and other benefits and

amenities as the departmental labour. The only exception is those employed in construction work or work of a purely temporary nature, not connected with the manufacturing process. Thus, all these issues are settled issues."

Further in para 166 the observations are thus:

"166. We, therefore, direct accordingly that no contract labour shall be employed in the industry by the employer, except in loading (including packing) and unloading operations as stated by the First Wage Board and where an employer employ contract in any other occupations such labour shall be made regular departmental employees under the employers and made eligible to the same wages, D.A., bonus and other allowances under our award as other regular employees under the employer, provided they give corresponding workload obtaining for similar occupations in units nearabout, where their employees are getting Wage Board Rates. We further direct that all workers employed in the permitted occupations of loading (including packing) and unloading shall be given the same wages be a bonus and other benefits as are given to the regular employees of the company."

Further in paras 50 and 51 of the award while dealing with the issue of "coverage" the Arbitration extracted the "coverage" as follows:

Coverage: "All the following employees

50. It is, therefore, necessary to reproduce the relevant extract from the First Wage Board for Cement Industry in this regard:

13.12 Our recommendations should apply to workers employed directly or through contractors at the cement factories. Our recommendations do not cover workers employed by contractors where such workers are engaged on construction work and on purely temporary jobs, not connected with the manufacturing process."

10. Para 51 of the award stated that the agreement between the parties before us covered practically the whole lot of workmen employed in the Industry. Therefore, the Arbitrators were happy that the major part of the problem relating to coverage had thus been solved by agreement and the Arbitrators made award accordingly.

11. After careful reading, the aforesaid paragraphs of the notification, the workers employed by the Contractors where such workers are engaged on construction work and on purely temporary nature, not connected with the manufacturing process are exempted from the purview of the abolition of the contract labour system in the respondent-CCI.

12. Now, we will deal with the ratio of judgments relied on by the learned Counsel for the petitioner. In Shankar Mukherjee's case (supra), the Government of West Bengal issued Notification dated February 9, 1980 u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called the

"Act") prohibiting the employment of contract labour in 16 departments covering 65 jobs in the establishments of M/s. Indian Iron and Steel Co. Ltd. in the State of West Bengal. The job of "loading and unloading" of bricks from wagons and trucks in the Brick Department has been specifically excluded from the beneficial purview of the Notification and the said action of the State Government had been challenged in the writ petition under Article 32 of the Constitution of India by the affected workmen on the ground that they had been subjected to hostile discrimination so much so that the workmen doing the same job in other departments and allied jobs in the same department have been rescued from the archaic system of contract labour whereas the petitioners had been singled out and left to be grinded under the pernicious effect of this primitive system. Their Lordships of the Apex Court in the fact of the case found that there was no denial nor any averment or material on the record to show that the job of "loading and unloading" of bricks was not incidental or allied to the stacking of the bricks and even otherwise the Hon"ble Judges failed to understand how the stacking of bricks was a job which was not incidental to loading and unloading. The purchase of bricks, transportation to the factory, unloading, stacking and use in the furnace were jobs in one continuing process and it was difficult to accept that these jobs were not incidental or allied to each other. Further, it was found that there was no material or basis to show that the job of "loading and unloading" of bricks was not of perennial nature and the writ petition was allowed striking down the words "except loading and unloading of bricks from wagons and trucks". In paragraph-9 of the said Notification issued by the Government of West Bengal being discriminatory and as such violative of Article 14 of the Constitution of India and all the benefits were allowed to the petitioner. Strong reliance has been placed by the learned Counsel for petitioner on Air India Statutory Corporation's case (supra) in which the question before their Lordships of the Supreme Court for consideration was whether the Central Government has the power to accept subsequent recommendations of another Committee for not abolishing contract labour system in Air India "Statutory Corporation's establishment after Notification dated December 9, 1976 issued u/s 10 by the Central Government, being the appropriate authority u/s 2(i)(a) for abolition of contract labour system in appellant's establishment on the basis of recommendations of the Central Advisory Board under the Act was valid or not. Their Lordships held that on abolitions of contract labour system from any establishment u/s 10 of the Act by the appropriate Government the logical and legitimate consequences thereof will be that the erstwhile regulated contract labour covered by the sweep of such abolition for the activities concerned would be entitled to be treated as direct employees of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished. It was further observed that when the work is of perennial nature and instead of engaging regular workmen the system of contract labour is resorted to, it would only be for fulfilling the basic purpose of securing monetary advantage to the

principal employer by reducing expenditure on work force. It would obviously be an unfair labour practice and it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. Further it was said that such a system was tried to be put to an end by the Legislature by enacting the Act but when it found there are certain activities of establishment where the work is not of perennial nature then the contract labour may not be abolished but still it would be required to be regulated so that the lot of the workmen is not rendered miserable.

13. There is a distinguishing feature in the case before us. In the present case admittedly, the petitioner was employed by the respondent-Contractor to whom the principal employer respondent- CCI allotted the work under the work orders placed on record and marked Annexures R-2/1 and R-2/2. These work orders were issued on month-to-month basis for doing the additional casual labour deploying for carrying out electrical and instrumental department for maintenance jobs during kiln stoppage in the month of October, 1996 and the approximate cost of the work was hardly Rs. 1,166.00 paise. Similarly, for February 1997, the work order issued in favour of respondent-Contractor by the principal employer was for doing the work of contract labour engaging for repairing the damaged cable for power supply to destination and the approximate cost of the work was Rs. 699.60 paise. The respondent-Contractor employed the petitioner and other employees on casual basis therefore, it is in dispute whether works allotted to the Contractor for which the petitioner and other employees are being engaged as contract labour is of perennial nature connected with manufacturing process and do not fall in exceptions for which the evidence is required. The copy of the attendance register marked Annexure PA pertaining to the month of January 1986 filed by the petitioner with his application would go to show that the petitioner seems to have been engaged in January 1986 by Contractor, namely, Sh. K.N. Singh and not by respondent-Contractor for doing the job in mechanical section and this document is of no assistance to the petitioner. The work orders placed on record against which the petitioner is alleged to have been engaged by respondent-Contractor are prima facies of purely temporary nature and they are not connected with the manufacturing process. It cannot be held in the absence of material on record that the petitioner is engaged by the principal employer for doing the work through respondent-Contractor and the said work is of regular nature connected with the manufacturing process. Both the respondents have categorically denied that the petitioner has been working with either of them continuously since 1983 as alleged by him. Respondent-Contractor in his reply affidavit has made specific averments that the petitioner was engaged on daily wage of Rs. 53/- per day w.e.f January, 1993 and the engagement of the petitioner from 1993 is also under dispute and no material has been placed on record by the petitioner to show that he has been continuously and uninterruptedly working with the respondents since 1983. Again, there is no material on record to show that cleaning of: drains as and, when there is requirement, the cleaning of packing

house and cleaning of kiln which is again not a regular phenomenon, etc. are the works allotted to respondent-Contractor by the principal employer-CCI are directly connected with the manufacturing process of the cement by respondent-CCI. These are all questions of fact which cannot be decided normally by the Court in exercise of the jurisdiction under Article 226 of the Constitution of India without cogent and convincing material brought on record. In the peculiar facts and circumstances of the case on hand, it appears to us that the aforesaid decisions are of no assistance to the petitioner in deciding the issue in controversy before us and we are unable to countenance the submissions of the learned Counsel for the petitioner. The Writ Court would always consider it to be inappropriate to embark upon or entertain such issues for adjudication under Article 226 of the Constitution of India, though there are no statutory or constitutional limits stipulated on the exercise of power itself and the limitations imposed are self-imposed or imposed by any declaration of law made by the Apex Court. There are vertical differences of vital and serious nature in the claim made of the nature of relationship between the parties which is a fundamental and basic issue and which will have great impact upon the right to claim relief in these proceedings itself. Whereas the respondent-CCI claims that the petitioner is being engaged by the respondent-Contractor and it has got no persuasive and any other type of supervisory control over the engagement of the petitioner by respondent-Contractor. The respondent-CCI has only to supervise whether the petitioner and any other daily waged workmen have been paid minimum wages by the Contractor as fixed by the State Government under the Minimum Wages Act from time to time and except for this kind of supervision prima facie there is no other obligation on the part of the respondent-CCI to have any type of control over daily wages workmen employed by the Contractors to whom works are allotted on the basis of work orders. In the absence of proper investigation and determination of the factual issues, disputes, after collecting the required materials in accordance with law, it would be not only inappropriate but impossible also for this Writ Court to effectively adjudicate on these factual issues concerning the status of the petitioner and the nature of relationship between parties in these proceedings under Article 226 of the Constitution of India. It is not in dispute that the Central Government issued notification in the official Gazette after award was made by the Arbitrators u/s 10 of the Act prohibiting the employment of contract labour in C. C.I. in any process, operation or other work in any establishment, but with specific exception that those employed on construction work or work of purely temporary nature, not connected with the manufacturing process are not covered under the abolition of the contract labour system. We cannot accept the contentions of the learned Counsel for the petitioner that the respondent-CCI has been paying higher wages to its employees working in "loading and unloading" section of the factory than being paid to the petitioner for the reason that the respondent-CCI has categorically stated in its written statement that "loading and unloading" of the material in the factory, it has been taking the said work from its regular employees and not through the Contractors. The contention of the learned

Counsel that the petitioner has to be automatically absorbed by the principal employer in Grade-E as he has been working for the last about 15 years cannot be accepted unless it is held that the petitioner has been directly engaged by the respondent-CCI is doing its work and the principal employer is not exempted from awarding the work orders to the Contractors under the exception clause of the award. The period of operation of settlements and awards is covered by Section 19 of the Industrial Disputes Act, 1947 and such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. A settlement or an award continues to operate after service of notice and lapse of two months subsequent thereto contemplated under Sub-section (2) or (6) of Section 19 or notice proposing change in conditions of service u/s 9-A and terminates only when replaced by another settlement or award (see) Life Insurance Corporation of India Vs. D.J. Bahadur and Others,

14. It is settled position of law that normally disputed questions of fact should not be gone into the writ jurisdiction for which recording of evidence becomes necessary, further in order to decide whether the contract between respondent-CCI and labour contract is a camouflage or sham and whether the petitioner is covered under the exceptions clause of the award notified in the Gazette or not, evidence may have to be led by both the parties. On the facts of the case on hand, from the prayers made in the writ petition and of the arguments advanced by the learned Counsel appearing on either side and on a perusal of the averments made by either party, it would be seen that the petitioner was admittedly employed by the respondent-Contractor. When the contract was subsisting, employment of the contract labour depended upon day-to-day exigencies and requirements of engagement of the petitioner by the respondent-Contractor would depend upon such exigencies, we leave all these questions open for the Competent Authority for its decision which shall be taken by the said Authority in accordance with law and without prejudice to the interest of the parties and the observations made in this judgment which are confined to the decision of the instant writ petition. In Scooters India and Others Vs. Vijai E.V. Eldred, their Lordships were dealing with the case of workman absenting without intimation and whose services were terminated by the management and who assailed the order of his termination by way of writ petition under Article 226 of the Constitution of India in the Allahabad High Court, Lucknow Bench and the Workman's writ petition has been alleged granting relief of re-instatement with three years back wages in addition to holding Clauses 9, 3, 12 of the standing orders as invalid. In the SLP filed by the management, their Lordships held that the facts of the case are sufficient to indicate that there was no occasion for the

High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the determination of disputed questions of fact for which remedy under the industrial laws was available to the workman.

15. No other point was urged before us by the learned Counsel for the parties.

16. For the aforesaid conclusion, we do not find any merits in this writ petition. We accordingly dismiss it, however, with liberty to the petitioner to raise all the issues in appropriate proceeding before an appropriate forum, if he so desires or chooses and permissible under law. In the facts and circumstances of the case, we leave the parties to bear their respective costs.

CMP Nos. 1197/98 and 1528/98.

In view of the dismissal of the writ petition, these applications are also dismissed.