

(1995) 01 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 2243/1992 (R)

Badarpur Thermal Power Station and Another	APPELLANT
Vs	
Central Government Industrial Tribunal II and Others	RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Citation : (1995) 01 PAT CK 0030

Final Decision : Allowed

Judgement

R.N. Sahay, J.—The Central Government vide notification dated April 5, 1980, referred a dispute between the petitioners and workmen u/s 10 (4) of the Industrial Disputes Act for adjudication to the Central Industrial Tribunal, Dhanbad. The terms of reference were as follows:-

"Whether the demand of the workmen of Badarpur Thermal Power Station Coal Monitoring Cell, Dhanbad for regularisation to the post of Loading Inspector in the grade applicable to a regular employee of the Badarpur Thermal Power Station, New Delhi with benefits of dearness allowance, house rent allowance etc. is justified? If yes to what relief these workmen are entitled to?"

2. The Industrial Tribunal by an award dated March 23, 1992 (Annexure-1) answered the reference in favour of the workmen and directed the petitioner-Management to regularise all the concerned workmen except one in clerical grade-II with effect from the date of the reference. The award has been challenged by the petitioners on the ground that it is without and/or in excess of jurisdiction and illegal in view of the fact that it is beyond the term of reference.

3. According to Sri Mathur, senior counsel appearing for the petitioner contended that the award illegally directed the Management to give clerical grade-II to the workmen when no such demand was made by the workmen for grant of grade II in their pleadings nor any evidence was led nor there was any regular employee in the Delhi establishment in the said grade. The Tribunal failed to consider that casual/temporary workmen in the Delhi establishment were employed on

payment of minimum wages applicable under the Minimum Wages Act. The principle of equal work has no application to the present case in view of the fact that there was no Loading Inspector at the Delhi establishment nor there was any other category of workmen doing the same work as the workmen concerned used to perform at Dhanbad establishment. Sri Mathur submitted that principles invoked by the Industrial Tribunal in holding the Dhanbad establishment to be part of the Delhi establishment, are irrelevant and they are not applicable to the terms of the reference. The award, therefore, suffers from the error apparent on the face of the record. The award has been challenged as perverse.

4. On the other hand, the counsel for the workmen Sri Baban Lal vehemently argued that the contentions raised on behalf of the Management is devoid of any merit. The award was eminently just and in accordance with law.

5. In order to decide the question as to whether the impugned award is liable to be quashed on the ground urged on behalf of the petitioner, it would be necessary to state in brief the material facts of the case. The second-petitioner National Thermal Power Construction is a company registered under the Companies Act having its registered office in Delhi. The first petitioner is a unit of Petitioner No. 2, Badarpur Thermal Power Station and is engaged in the business of generating electricity. Coal is the basic raw material for generation of electricity. It buys coal from the Coal India Ltd. and its subsidiaries. The price to be paid to the collieries for the coal is dependant upon the quality of coal supplied to Badarpur Thermal Power Station. Sampling and analysis of coal was being done by BTPS at its power station at New Delhi after the samples were drawn, jointly by the representatives of BTPS and representatives of the seller-coal company and the price of the coal is paid on the analysis of coal,

6. As the sellers were interested in obtaining some provisional payments, therefore, an agreement was arrived at in 1985. The relevant portion of Clause 6 of the said agreement deals with sampling of coal and analysis and reads as follows:-

"Sampling of coal and analysis:-

6.1 In case of supplies of coal of Thermal power stations drawing supplies by rail, sampling and analysis shall be undertaken for determining the quality of coal supplied both at colliery and power station end.

6.1.2 Initial sampling and analysis shall be made at colliery end for which the purchaser may nominate a representative to witness the same for making provisional payment to coal companies subject to subsequent cost adjustments being made on joint sampling results at the power station end.

6.1.3. The joint sampling and analysis conducted at the power station shall determine the quality of coal supplied. The weighted average of the results of the joint sampling in each month at the power station shall be the basis for determining the quality and final payment to the coal company.

6.1.4. Supplier as well as purchaser shall provide all reasonable facilities, to be agreed by both parties to this contract to each of their representative for implementation of sampling and analysis in terms of aforesaid clauses of the agreement.

7. The provisional payment was made by BTPS on the basis of the joint analysis carried out at colliery end. In view of the aforesaid BTPS set up a Coal Monitoring Cell at Dhanbad which Cell was headed by Governor. In order to collect information from the Collieries of coal despatches to BTPS, the workmen concerned were engaged as temporary/casual employees by the Coal Monitoring Cell as daily rated employees. The workmen concerned are to go over to collieries to collect the numbers of wagons in which coal had to be loaded and/or despatched to BTPS and submit their report to the Coal Monitoring Cell. Coal Monitoring Cell in turn used to submit information about despatches to BTPS for the purpose of arranging provisional payments. The analysis of coal thus used to be carried out twice and at two different places which sometimes led to disputes between the colliery and BTPS and in view of this duplication of work, ultimately it was decided between the parties that coal would not be analysed at the point of despatch. Colliery became responsible to supply good quality of coal to BTPS. In view of the subsequent events, the concerned workmen were no more involved in sampling and analysis of coal. According to the petitioner, in view of the aforesaid fact, workmen concerned were not required and, as admitted by them, no work was taken from them from January 1987,

8. Koila Ispat Mazdoor Sangh (Respondent No. 3) raised a demand for regularisation of workmen concerned to the post of Loading Inspector/ Supervisors. It alleged by letters dated November 16, 1987 and July 30, 1987, that the job being performed by the work concerned, is similar in nature and the job description laid down was the same which was being performed by the Loading Inspector/Supervisor in the coal industry. It was also Coal Monitoring Cell created to check inferior quality, proper loading and joint sampling. The coal sent is analysed jointly including chemical analysis.

9. The third respondent moved the Conciliation Officer and demanded as is evident from his letter dated July 30, 1987 and November 16, 1987 (Annexures 2 and 3) that the workmen concerned be paid wages of Rs. 742-1422 as per the Coal Wage agreement NCW A III as basic pay and other benefits. According to the case of the Management, the workmen were never designated as Loading Inspectors or Loading Supervisors and, in fact, the petitioners did not have any post of Loading Inspector/Loading Supervisor.

10. After submission of failure report of the Conciliation Officer, the registry of Labour Department issued notification referring the dispute to the Tribunal. Before the Tribunal, third respondent submitted his written statement wherein while describing duties of these workmen concerned, it was also alleged that the main function is to see the shale stones are not loaded with coal in the wagon as also to see that coal of proper sizes are loaded in the wagon. They are also to

supervise that the coal is loaded properly and in due time.

11. Further case of the Respondent-Union was that BTPS has a joint agreement and that the present one was made effective from January 1, 1987, and has to continue for a period of four years. It was also alleged that according to the agreement workers have been categorised in 11 grades i.e. from W-1 to W-11 and it was submitted that the employees concerned are entitled to wages as prescribed for W-7. The unit also relied on the principles of equal wages for equal work.

12. Petitioner-Management in their written statement dated October 12, 1987 besides challenging the validity of the Reference, controverted the case put up by the Union after setting out that the joint sampling, due to which the said Coal Monitoring Cell had been set up, had ceased and the workmen concerned were no longer required by the Management and that the steps were being taken to close down the Coal Monitoring Cell at Dhanbad and that the workmen concerned had initiated conciliation before the LIC Central, Dhanbad against the proposal of the Management to retrench them. The petitioner's case was that no demand for regularisation of temporary employees can be made when they are surplus to the requirements. They denied that the workmen concerned were Inspector-cum-Loading Supervisors of the BTPS and/or that they were employed for loading coal of different collieries. It was also submitted that there does not exist any post in the power plant of BTPS though they were performing same or similar types of job as were being performed by the workmen concerned. The wage agreement which the units of BTPS covers only employees directly working in the plant on permanent and regular basis and do not cover daily rated employees working as temporary workmen in the temporary establishment in the same plant. The daily rated employees were being paid more than the minimum wages prescribed by the concerned State Government under the Minimum Wages Act.

13. The petitioners lastly submitted before the Tribunal that out of 17 persons mentioned in Schedule, 5 persons (Serial Nos. 12, 13, 15, 16 and 17) did not find any interest and left their employment voluntarily between February 19, 1986 to July 13, 1988 and one worker Jiauddin Siddique submitted his resignation on January 3, 1989.

14. According to the petitioners, the demand of the workmen at the stage of the conciliation was contrary to the demand made before the Tribunal. Before the Tribunal, they claimed the grade W-7. The parties relied upon documentary as well as oral evidence. Workmen had examined two witnesses while the management also examined two witnesses. Learned counsel for the Petitioner has referred to the evidence of Sri Subh Narain Mishra WW-1 and Ramesh Chandra Asthana WW-2.

15. The relevant finding of the Tribunal is as follows:-

A. The Monitoring Cell at Dhanbad was part and parcel of BTPS at New Delhi. This finding supported by the fact that the concerned workmen had raised

dispute for payment of bonus and the dispute was referred to the Tribunal which held that Monitoring Cell at Dhanbad was established in BTPS.

B. The evidence of M.W.1 showed that attendance of concerned workmen was noted by the clerk and attendance Register is to be sent to Delhi and on the basis of which Muster Roll was prepared and payment was made to the concerned workmen. According to M.W.1 some of the concerned workmen had already been dismissed by the Management of BTPS on the ground of their unauthorised absence. This means that control, supervision and payment to the concerned workmen was done by BTPS. This aspect of the matter has not been challenged by the Management. The evidence of these important witnesses were not that sufficient to prove that the concerned workmen are full-fledged employees of BTPS.

The Tribunal ultimately held as follows:-

"In this situation, perhaps, the management of BTPS cannot be permitted to absolve their responsibilities by simply stating that the concerned workmen were engaged by local representative of Thermal Power plant as daily rated temporary employees to collect information regarding number of wagons lodged by Coal companies at different colliery sites for the purposes of monitoring information to power stated on BTPS, New Delhi. Whether they were engaged as daily rated or monthly rated was not of much concern. The question is that they were engaged by the representative of BTPS who was qualified enough to hold the post of Senior Engineer. According to law the management as a whole is bound to share responsibilities for any act of omission or commission done by an employee in discharging his official function."

16. The Tribunal then proceeded to consider as to what was the actual nature of the job being performed by the concerned workmen. The Tribunal recorded the following finding quoted below:-

"I have examined almost every aspect of the matter and the position now stands clarified that the concerned workmen are employees of BTPS serving the management for the last 10 years. As discussed above they have also completed 240 days in a calendar year. The management may not have any post of Loading Inspector/Supervisor but the post of Clerk grade-II cannot be denied which the concerned workmen have also been doing at the loading point. I may also refer to a few of the documents filed on behalf of the managements. Ext M/7 series are the notice given to some of the concerned workmen regarding disciplinary action proposed to be taken against them for their unauthorised absence. Ext M-8 is the joint inspection report. Ext M-9 is the acquittance roll of the concerned workmen..."

17. Mr. Baban Lal submitted that the plea of the petitioner that the Tribunal has travelled outside the term of the Reference, his plainly erroneous contention and this is the only point which requires consideration. Counsel submitted that if such a question is raised, one is required to look into the term of the Reference and

construed it. Learned counsel placed reliance on *Agra Electric Supply Company Ltd. v. Workmen* reported in (1983-I-LLJ- 304) in which it was held at P 305:

"The terms of reference being a dispute for industrial adjudication should not be construed too pedantically or technically. In Industrial law the rigid rules of contract do not govern the situation and an amount of flexibility in the exercise of powers taking liberties with the strict rights of parties, is permitted to Tribunals. Industrial Jurisdiction is an alloy of law and social justice".

The same was the view of the Supreme Court in an earlier case reported in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, .

18. Sri Babanlal submitted that once the question of nature and scope of the terms of reference is required to be ascertained, the Industrial Tribunal has to look to the pleadings of the parties. When the question of interpretation and construction of the term of reference by the Tribunal arises whether Tribunal has gone beyond the terms of reference, the Tribunal is to consider (a) the nature of dispute; (b) the demand of the workmen; (c) the pleading of the parties in those matters and incidental matters if any as reference to u/s 10(4) of the Industrial Disputes Act, 1947. He submitted that in the instant matter, the Tribunal has already mentioned the case of both the workmen and the Management. It is admitted case that provident fund is deducted from the wages of regular employees of BTPS and similarly provident fund contribution is deducted from the wages of the workmen concerned of Coal Monitoring Cell at Dhanbad. Provident Fund contribution is deducted from wages of only regular employees and that being the position the concerned workmen are held to be regular employees of BTPS/NTPS.

19. Mr. Baban Lal has submitted that the award cannot be assailed on the ground that the petitioners are not entitled to W-7 grade as granted by the Tribunal. He submitted that in the present case, the workmen concerned simply want that they be treated as regular employees and paid wages and other benefits. This matter has been discussed by the Tribunal in Paragraph 8 of the award. Mr. Baban Lal referred to the case of *Tilak Raj Sohal* where it was disputed that the workman had been doing the job of clerical nature. He next submitted that the workmen concerned had been working in a particular job and are being paid the wages for the said job. In fact, the Management had been trying to confuse the matter. As the Management was neither fixing their proper wage for a particular job, the reference was made for the same. Counsel submitted that the Tribunal was right in holding that although the workmen concerned cannot be designated as Loading Inspector, but the wages of clerical grade-II cannot be denied to them. The Tribunal had ample power and jurisdiction to mould the relief in industrial jurisprudence of social justice. In this connection, he has relied on the case of *Hindustan Steel Ltd. v. Workmen of its refractories department and Anr.* reported in (1965-I-LLJ-253) (Ori).

20. Learned counsel next submitted that although the Management has closed the working of Coal Monitoring Cell, they cannot be allowed to do away with the services of the concerned workmen. Supreme Court in the case of *Avon Services v. Industrial Tribunal* reported in 1979 1 LLJ 1 held that in such cases, the Management has to follow the procedure as laid down u/s 25F. The Management did in fact apply u/s 29 of the Industrial Disputes Act for permission to the Government of Bihar for retrenching the workmen, but the same was rejected.

21. Mr. O.P. Mathur senior Advocate, submitted that the Tribunal has given a positive finding that there was no post of Loading Inspector but still held that the workmen cannot be denied clerical grade-II. It was submitted that this finding of the Tribunal is beyond the terms of the reference. There was no demand by the workmen for such a grade in the pleadings. No evidence was led on this point. There were no regular employment in the Delhi establishment in the said grade. Learned counsel argued with all emphasis that principle of equal pay for equal work has no application in the present case because there is no post of Loading Inspector at the Delhi establishment nor there is any other category of workmen doing the similar nature of work as the concerned workmen used to perform at Dhanbad establishment. Therefore, the question of equal pay in absence of equal work cannot arise. He submitted that the parties were at variance with regard to the exact duties performed by the workmen concerned. The Tribunal did not find out that was the exact duty of the workmen, but concluded that they were doing the clerical work. The Tribunal was incompetent to grant any grade except one prescribed for the post of Loading Inspector if available subject to grant any grade except one described for the post of Loading Inspector if available subject to the condition that if more than one grade was applicable, the Tribunal was required to decide as to which out of the said grade can be granted to the workmen. The Tribunal, therefore, had no jurisdiction to order regularisation of workmen concerned in any other post or in any other grade.

22. Learned counsel referred to the joint agreement executed between BTPS and its workmen wherein the workmen were categorised in 11 grades. The workmen in the present case demanded wages as prescribed for W-7. It is clear that in W-7 there is no grade of clerical grade-II. There is no existing post of Loading Inspector at Delhi Establishment. The Tribunal, thus, has surpassed its jurisdiction. Therefore, the award is liable to be quashed.

23. Mr. Mathur submitted that the workmen concerned were employed for supervising the loading of coal in the different collieries to be supplied to the BTPS. Their main functions are to see that shale and stones are not loaded with the coal in the wagons. They have also to supervise that coal is loaded properly and in due time. They are required to maintain reports in writing to be signed by them. This was the case in the written statement. On the basis of these facts, the demand of the concerned workmen is only for regularisation to the post of loading Inspector. Mr. Mathur referred to the evidence of W.W.I. Sri Narain Mishra and W.W.2 Sri Ramesh Chandra Asthana. Both these witnesses have reiterated

their case in the written statement. The Tribunal in Paragraph 9 of the award held as under:-

"The Management may not have any post of Loading Inspector/Supervisor but the post of clerk grade-II cannot be denied which the concerned workmen had been paying at loading point."

24. Mr. Mathur vehemently argued that the Industrial Tribunal being a Tribunal of limited jurisdiction derives its jurisdiction only from the reference order. The Tribunal had no jurisdiction to regularise the workmen to another post than the post of Loading Inspector. The Tribunal, therefore, could not have regularised the workmen to the post of clerk and the same was not the case of the workmen. The Tribunal had gone beyond the pleading of the parties.

25. In support of this contention, reliance has been placed on *Birla Cotton Spinning & Weaving Mills Ltd. v. Their Workmen* 1956 II LLJ 188 (LAT). In this case, the specific term of reference was: "Should the wages of the workers employed in Engineering and Mechanical department need to be revised and if so on which lines and to what extent".

The Tribunal changed the designation of the workers and fixed them in revised grades of wages fixed for such designation. The Labour Appellate Tribunal held that change of designations cannot be said to be incidental to the question of revision of wages specifically referred to the Tribunal for adjudication.

26. In *Rohtas Industries Limited v. The Workmen of Rohtas Industries Ltd. and Ors.* 1968 Lab IC Page 82 Patna High Court (DB) related to the demand that Shri Sarju Pd. Singh, Incharge Paper Godown, was entitled to higher grade and scale of pay. The Tribunal gave designation of Shift Incharge Paper Godown to the said employee. It was held by this Court that the question of designation of Sri Sarju Pd. Singh did not arise and it could not be said that it was a matter incidental to the point referred for adjudication. The award was set aside.

27. In *Jaipur Spinning & Weaving Mills Ltd. v. Jaipur Spinning & Weaving Mills Ltd. Mazdoor Union* 1959 I LLJ 656 the Rajasthan High Court while interpreting the expression "the matters incidental thereto" occurring in Section 10(4) of the Industrial Disputes Act, observed that "the ordinary accepted popular sense implies a subordinate and subsidiary thing related to some other main or principal thing requiring casual attention while considering the main thing. Obviously the matters which require independent consideration or treatment and have their own importance, cannot be considered incidental.

28. Rajasthan High Court held that the Tribunal acted without jurisdiction in giving its award on the question of increase in wages which did not come within the ambit of the term of reference. The Hon'ble Supreme Court in *Delhi Cloth & General Mills Co. Ltd. v. Its workmen* [1967-I-LLJ-423] while dealing with Section 10(4) of the Industrial Disputes Act held "the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points

specifically mentioned and anything which is incidental thereto.

Dealing with the word "incidental" the Supreme Court held that "it means something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental therefore, cannot cut at the root of the main thing to which it is an adjunct.

29. In Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, Reference made to the Tribunal was at 233 :

"Whether the proposed closure by the management of the Perfect Pottery Co. Ltd., Jabalpur of their pottery factory at Jabalpur with effect from July 1, 1967, is proper and justified? Dealing with the said term of reference, the Court held that "the very terms of the reference show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say that whether the proposed closure of the business was proper and justified. In other words by the references the Tribunal was not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers".

30. Mr. Mathur next submitted that the main duties and not incidental duties determine classification of an employee, and in this connection he has placed reliance on *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, wherein the Supreme Court held:-

"In practice, quite a large number of employees are employed in Industries to do work of more than one of the kinds mentioned in the definition. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workmen" under the exception. For this purpose, a workman must be held to be employed to do work which is the main work he is required to do, even though he may be incidentally doing other type of work."

31. In another case *Management of May and Baker (India) Ltd. Vs. Their Workmen*, the Court held that "if manual or clerical is only a small part of the duties of a person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workmen."

32. That third contention of Mr. Mathur was that for giving regularisation, availability of post is necessary. In *Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others*, the petitioner had been working as daily rated workmen for long time in Diamond Mining Project. Their demand was for regularisation and equal pay for equal work on the ground that they were discharging the same duties as regular workers. The High Court

rejected the claim on the ground that the workmen had no specific job to do and they were surplus to the Establishment and merely kept on the roll on humanitarian ground. The Supreme Court affirmed the order of the High Court and it was held that the principle of regularisation of daily rated workmen and payment of pay equal to that of a regular workman arises only when the daily rated workman is doing the same work as the regular workman and there being a vacancy available for him, he is not absorbed against it or not even paid equal pay for the period during which the work is taken from him. This decision of the Supreme Court is duly applicable to the facts of this case.

33. In AIR 1989 29 (SC) the Supreme Court held that the nature of work and the responsibilities of the posts are matters to be evaluated by the management and not by the Court.

34. The last contention of Sri Mathur was that the Coal Monitoring Cell was a Project. This was set up in 1982 to ensure regular supply of coal for making interim payment to the collieries for the coal supply. The Cell was established for the purpose of analysis of the coal before despatching the same. Later on it was found that double analysis of coal led to misunderstanding and dispute arose between the collieries and the petitioner and that later on the analysis of coal at the collieries was given up. Since the Project was abolished, the workmen were admittedly not doing any work since February, 1987. In the circumstance, the question of regularising them does not arise. The petitioner filed an application before the Industrial Tribunal and sought its permission to retrench these workmen. The petitioner also filed application u/s 25N of the Act seeking permission of the Central Government to retrench them. This permission was rejected by the Central Government vide its order dated June 9, 1992. Due to the impugned award by which the Tribunal directed that the workmen concerned be regularised as clerks. However, it will be open to the Management to seek permission to retrench them subject to the result of this application, with regard to the validity of the impugned award.

35. Mr. Mathur has placed strong reliance on Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . This was the case of a Project. The Supreme Court held that "to get an employment under said scheme and to claim on the basis of the said scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself."

36. In my considered opinion, this writ application should succeed on all the points discussed above. In my opinion, the jurisdiction of the Industrial Tribunal in Industrial dispute is limited to the points specifically referred for its adjudication and matters incidental thereto, and, therefore, the Tribunal in the present case illegally travelled beyond the term of reference. The Industrial Adjudicator constituted under the Act is not vested with any inherent power or jurisdiction.

37. The contention of Sri Mathur that there was no basis for the Tribunal to

award the clerical grade to the workmen, is absolutely sound. The post given to the workmen does not come in any of the categories categorised in W-7 grade. This contention of Sri Mathur that the workmen are surplus and are not doing any job since February 1987 is equally sound. If they are sitting idle, the question of their regularisation does not arise as held in Satya Narayan's case (Supra).

38. In view of the discussion above and in the facts and circumstances of the cases, the writ application is allowed and the impugned award of the Tribunal is hereby quashed by grant of writ of certiorari. There will be no order as to costs.