
(2022) 08 UK CK 0087

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 368, 369 Of 2021

Bharat Heavy Electricals Limited & Another

APPELLANT

Vs

Rajendra Singh @ Rajendra And Others

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Contract Labour (Regulation & Abolition) Central Rules, 1971 — Rule 25, 25(2)(v),
25(2)(v)(a)
Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 08 UK CK 0087

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : V.K. Kohli, Kanti Ram Sharma, T.A. Khan, Mohd. Hasnain Raza

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Since common questions of law and fact are involved in both writ petitions, therefore, these are being taken up and decided together by this common judgment. However, for the sake of brevity, facts of WPMS No. 369 of 2021 are being referred.

2. These petitions have been filed by Bharat Heavy Electricals Limited, Haridwar challenging the orders dated 28.10.2020 passed by the Deputy Chief Labour Commissioner (Central), Dehradun. By the said orders, the applications filed by private respondents under Rule 25(2)(v)(a) of Contract Labour (Regulation & Abolition) Central Rules 1971 (for short, hereinafter referred to as '1971 Rules') have been disposed of by recording a finding that nature of duties and responsibilities of the private respondents are similar to those performed by regular Malis serving in Bharat Heavy Electricals Limited.

3. Bharat Heavy Electricals Limited has challenged the aforesaid orders passed by Deputy Chief Labour Commissioner (Central), Dehradun by invoking

supervisory jurisdiction of this Court under Article 227 of the Constitution.

4. Respondents are contract labours who have been engaged to perform duties of Mali in the establishment of Bharat Heavy Electricals Limited (BHEL). They were engaged as such in the year 1987. Subsequently their services were terminated, against which they raised industrial dispute which was referred for adjudication to the Labour Court, Dehradun. Vide award dated 5.7.1996, the Labour Court answered the reference in favour of the private respondents and declared their termination as unjust & illegal. After a long drawn litigation, private respondents were reengaged through contractor w.e.f. 8.1.2005.

5. In the year 2018, private respondents filed Writ Petition (S/S) No. 1464 of 2018 claiming wages and other benefits as were being given to Malis directly employed by the principal employer. A contention was raised on behalf of the petitioner in the said writ petition that since BHEL disputes the claim of Malis engaged through contractor for parity with the Malis serving in its permanent establishment, therefore, such dispute can only be decided under Rule 25(2)(v) (a) of 1971 Rules. In view of the objection raised on behalf of BHEL, the said writ petition was disposed of by a coordinate Bench of this Court vide order dated 22.2.2019 with direction to the Deputy Chief Labour Commissioner (Central), Dehradun to decide and come to a finding whether the nature and type of work performed by the workers who are in the permanent establishment of BHEL is the same as that of the contract labours (petitioners in the said writ petition).

6. Pursuant to the aforesaid order dated 22.2.2019, petitioners in WPSS No. 1464 of 2018 (respondents no. 1 to 4 in this writ petition) filed application before the Deputy Chief Labour Commissioner (Central), Dehradun under sub-rule (2) (v) of Rule 25 of Contract Labour (Regulation & Abolition) Central Rules, 1971 read with Contract Labour (Regulation & Abolition) Act, 1970, contending that they are entitled to same wages and other benefits as are being paid to the regular employees of BHEL in view of condition mentioned in clause 5(d) of the registration certificate issued to BHEL under Contract Labour (Regulation & Abolition) Act, 1970 and also in view of the provision contained in sub-rule (2)(v) (a) of Rule 25 of 1971 Rules. The relief clause of the application made by the private respondents is reproduced below:

"That in the light of above judgment the Hon'ble Court may kindly be pleased to decide the following questions:-

(i) As to whether the nature and type of work performed by the workmen engaged by the opposite party no. 1 directly as "Mali" was the same as is being done by the petitioners.

(ii) As to whether Mr.RajvanshiYadav was performing his duties as "Mali" till the date of filing the Writ Petition bearing no. 1464 of 2018 (S/S) i.e. on 15.03.2018."

7. In its reply filed before the Deputy Chief Labour Commissioner (Central), Dehradun, petitioner contended that private respondents are not performing

same or similar kind of work as are performed by the permanent staff of BHEL and nature of their duties are also different. Petitioner further contended that Malis serving in the permanent establishment are appointed by competent authority through a recruitment process, while Malis engaged through contractor do not have to face any such recruitment process, therefore, the claim of the Malis engaged through contractor for parity in the matter of wages is unsustainable.

8. Order dated 28.10.2020, impugned herein, is enclosed as Annexure-13 to the writ petition. Perusal of the same reveals that the learned Deputy Chief Labour Commissioner (Central), Dehradun has considered all relevant aspects in great detail before coming to the conclusion that private respondents engaged through contractor and the Malis serving in regular establishment of BHEL are performing same kind of work. Factors which were considered for arriving at such conclusion are (i) nature of work, (ii) duties performed (iii) responsibilities discharged by the private respondents, (iv) their reliability and (v) degree of skill.

9. Before arriving at the aforesaid conclusion, the Deputy Chief Labour Commissioner (Central) had called report from Assistant Labour Commissioner (Central) and the Labour Enforcement Officer (Central), who after making a field visit of the establishment of BHEL, had submitted their report.

10. On the issue of nature of work and duties performed by the private respondents, it was held that the private respondents are doing similar work i.e. of Mali and there is no qualitative difference between the duties performed between the two set of Malis. It was further held that no job chart was shared by the management of BHEL to show how the nature of work of permanent Malis is different from that of the Malis engaged through contractor. It was further held that even in the reports submitted by the Assistant Labour Commissioner (Central) and the Labour Enforcement Officer (Central), BHEL's inability to distinguish between nature of job performed by regular Malis and contractual Malis has been highlighted and thus a finding was recorded that in the absence of separate job charts, the work performed by regular Malis cannot be differentiated from that of Malis engaged through contractor.

11. On the issue of responsibilities, learned Deputy Chief Labour Commissioner (Central) has recorded a finding that though permanent Malis are being trusted by the management of BHEL and they are entrusted with the keys, etc. of the rooms, however, it is for the reason that they are permanent Malis and they are on the direct pay roll of BHEL, and this does not in any way reflect that there is divergence in duties with respect of primary job of Malis i.e. to sweep, clean, maintain and look after the lawns and parks, etc.

12. On the issue of degree of skill, it has been held that even though regular Malis may have received formal education to a slightly higher level, compared to the Malis engaged through contractor, however, degree of skill is not the years of formal education which one has had, but rather the skill required to perform the

job, which in the present case is that of a Mali. It has been further held that management of BHEL could not provide any material to show that skill of Mali is dependent on his formal education/academic achievement. It was further held that although role of formal education cannot be altogether ignored, however, had the formal education been a requirement for performance of duties as Mali, then BHEL could not have utilised services of contractual Malis for such a long period, and that too without any complaint.

13. Learned Senior Counsel for the petitioner contends that the order passed by Deputy Chief Labour Commissioner (Central) is erroneous and unsustainable. In support of his contention that the order impugned in the writ petition is contrary to law, learned Senior Counsel placed reliance upon a judgment rendered by Hon'ble Supreme Court in the case of *State of Punjab & Others v. Surendra Singh & Others*, reported in 2007 SCC 231. However, the said judgment is distinguishable on facts as in that case a Civil Court had directed for grant of Equal Pay for Equal Work to a daily wager engaged to drive a Tractor, however, his second prayer for regularisation was declined. High Court upheld the judgment of trial Court in second appeal. Hon'ble Supreme Court set aside the judgment rendered by High Court by holding that grant of pay scale is executive and legislative function, and not judicial function, thus the trial court could not have directed for payment of pay equal to regular Tractor Driver.

14. Learned Senior Counsel for the petitioner placed reliance on another judgment rendered by Hon'ble Apex Court in the case of *State of Haryana v. Jasmer Singh*, reported in 1996 (11) SCC 77. This judgment is also distinguishable on facts as in that case, a writ court in exercise of its jurisdiction under Article 226 of the Constitution had directed for grant of equal pay to persons engaged by State of Haryana on daily wage basis.

15. Learned Senior Counsel for the petitioner further contended that the impugned order is unsustainable as the Deputy Chief Labour Commissioner (Central) failed to consider that the source of recruitment and mode of appointment is entirely different in respect of regular Malis and Malis engaged on contract.

16. The above contention of learned Senior Counsel is bereft of merit. Rule 25(2) (v)(a) of the 1971 Rules confers a statutory right upon a workman engaged through contractor that he shall be entitled to same wages and other benefits as any other regular workman serving in the establishment, provided such workman engaged through contractor performs same or similar kind of work. Thus, the statute itself recognises the difference in mode of appointment between two categories of workmen. Yet it guarantees parity in wages and benefits to workmen engaged on contract with the regular employees of that establishment. This aspect has been dealt with by Hon'ble Supreme Court in the case of *Chemical Mazdoor Panchayat v. Indian Oil Corpn. Ltd.*, reported in (2018) 16 SCC 25. Para nos. 5 and 7 of the said judgment are produced below:

"5. The distinctions made and the findings recorded by the High Court, on the basis of the source of recruitment also, is not correct. There has to be difference between the sources for recruitment even then Rule 25 of the Rules confers protection, as permanent employees have to be inducted by the employer by a different set of procedure, whereas for worker employed by contractor, the procedure of induction is bound to be different. Prima facie protection is conferred of similar wages to the employee, engaged by a contractor. The impact of specific Rule 25 of the aforesaid Rules and law in this regard has to be taken into consideration before coming to a conclusion on this aspect.

7. Similarly, with respect to the slight variations in the nature of work on the basis of who cooks which item, the High Court could not have brushed aside the similarity. Often preparation of snacks is difficult than preparing regular food. There has to be a substantial difference between the nature of the work. That cannot be on the basis of items to be cooked, in the facts of the case. In case, somebody is preparing the regular food and somebody is preparing the snacks that cannot be a substantial ground so as to differentiate the nature of the work performed. Similarly, for malis, merely the fact that grafting is done by regular malis would not make much difference."

17. It is not in dispute that a coordinate Bench of this Court had relegated the private respondents to the forum provided under Rule 25(2)(v)(a) of 1971 Rules. Pursuant to order of this Court, Deputy Chief Labour Commissioner (Central) has returned a finding that the work, duties and responsibilities of private respondents are same as that of regular Malis serving in the establishment of BHEL. This Court does not find any perversity in the order passed by the Deputy Chief Labour Commissioner (Central), which are impugned in these writ petitions.

18. Learned Senior Counsel for the petitioner fairly submits that he is not questioning the jurisdiction of Deputy Chief Labour Commissioner (Central) to decide the issue, and he is challenging the finding recorded in the impugned order.

19. It is settled position in law that while exercising supervisory jurisdiction under Article 227 of the Constitution, this Court does not sit in appeal over the order passed by subordinate courts or tribunals, as held by Hon'ble Supreme Court in the case of India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and another, reported in (1977) 4 SCC 587. Paragraph no.5 of the said judgment is reproduced below:

"5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh v. Amarnath where the principles have been clearly laid down as follows:

"This power of superintendence conferred by Article 227 is, as pointed out by

Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjeeto* be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

The same view was reiterated by another Constitution Bench of this Court in *NagendraNath Bora v. Commissioner of Hills Division and Appeals, Assam*. Even recently in *BathutmalRaichandOswal v. Laxmibai R. Tarta* dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.”

20. Similarly, in case of *Radhey Shyam & another Vs. Chhabi Nath & others*, reported in (2009) 5 SCC 616, the Hon’ble Apex Court has held that power under Article 227 of the Constitution should be exercised very sparingly when manifest miscarriage of justice has been occasioned. Paragraph No. 31 of the said judgment is extracted below:-

“Under Article 227 of the Constitution, the High Court does not issue a writ or certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be exercised only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.”

21. In the impugned orders, the Deputy Chief Labour Commissioner (Central) has recorded a finding of fact that private respondents are performing same duties as are performed by regular Malis. There is no direction given to BHEL to grant any benefits to the private respondents. This Court is not inclined to disturb the finding of fact recorded in the impugned orders while exercising power under Article 227 of the Constitution. Thus, there is no scope for interference in the matter.

22. Consequently, writ petitions fail and are dismissed.