

(2015) 03 AHC CK 0156

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37471 of 2013

Bharat Pumps and Compressors Ltd.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 25-F

Citation : (2015) 4 AWC 3473 : (2015) 146 FLR 608

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : P.K. Sinha, for the Appellant; A.K. Yadav, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J—Heard Sri P.K. Sinha, learned Counsel for the petitioner, Sri Alok Sharma, learned Standing Counsel for respondent Nos. 1 and 2 and Sri Alok Kumar Yadav, learned Counsel for respondent No. 3. Learned Counsel for the petitioner submits as under:

"(i) Impugned award has been passed without considering the relevant materials on record establishing the respondent No. 3 as a contract labour.

(ii) The finding of continued service of the respondent No. 3 from 1.12.1984 to 12.1.1991 has been recorded by the respondent No. 2 merely on the basis of an alleged certificate of one Sri P.C. Tripathi, Deputy General Manager (Engineering), who was neither competent to issue such certificate nor this certificate was issued by the personnel department which is the competent department.

(iii) The respondent No. 3 has not completed continuous service of 240 days.

(iv) The respondent No. 3 was a contract labour of one Sri Om Prakash Yadav and subsequently he was a contract labour of one Sri Dinesh Giri who used to

supply labour on contract basis to the petitioner.

(v) None of the factors as propounded by Hon"ble Supreme Court in the case of Balwant Rai Saluja Vs. Air India Ltd., AIR 2015 SC 375 : (2014) AIRSCW 6387 : (2014) 9 SCALE 567 : (2014) 9 SCC 407 with regard to employer-employee relationship, have been considered by the respondent No. 2 while passing the impugned award and as such the impugned award is wholly invalid.

(vi) The Paper No. 14-B(1) which is the office order in which inadvertently, the name of the respondent No. 3 was mentioned, was amended on the very next day, i.e. 3rd June, 1986, and his name appearing in the said paper at serial No. 7 was deleted. Thus, this paper does not help the respondent No. 3 in any way.

(vii) Mere mentioning of name of the respondent No. 3 in the attendance register does not establish that the respondent No. 3 was an employee of the petitioner. The fact is that the respondent No. 3 was a contract labour and for that reason, against his name in the attendance register the words "C/L" has been mentioned which means contract labour and not the casual labour. At one or two places, the words "casual labour" was inadvertently mentioned in the attendance register, and therefore, no inference in favour of the respondent No. 3 should have been drawn.

(viii) Copy of identity card as produced by the respondent No. 3 was forged, inasmuch as the personal number in the said identity card was not mentioned."

2. Learned Counsel for the petitioner has relied upon the judgment of this Court in the case of M/s. Central Distillery and Breweries Ltd. Vs. Labour Court and Another, (2012) 135 FLR 871 in which it has been held that salary certificate is not conclusive proof of employment in the establishment. He relied upon a Single Bench judgment in the case of U.P. Project Corp. Ltd. Vs. Presiding Officer, Labour Court-I, (2015) 1 ADJ 91 : (2015) 144 FLR 452 : (2014) 4 UPLBEC 3306 to contend that identity card is not conclusive proof of appointment. He also relied on the judgment of Bombay High Court in the case of Bhartiya Kamgar Sena Vs. Udhe India Ltd. and Another, (2008) 1 BomCR 899 : (2008) 116 FLR 457 : (2007) 6 MhLj 185 in which it is mentioned that a register maintained for the purpose of attendance of workmen by itself cannot be a factor which would disclose complete control by the company over these workmen. He further relied on the judgment of Hon"ble Supreme Court in the case of Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, AIR 2006 SC 2682 : (2006) 110 FLR 552 : (2006) 6 JT 50 : (2006) 3 LLJ 326 : (2006) 6 SCALE 388 : (2006) 9 SCC 124 : (2006) SCC(L&S) 1617 : (2006) 3 SCR 80 Supp : (2006) AIRSCW 3574 : (2006) 5 Supreme 142 to submit that initial burden of proof of completion of 240 days continuous service is on the workman.

3. He submits that under the facts and circumstances of the case and the law laid down by High Courts and Hon"ble Supreme Court, the impugned award is wholly illegal, and therefore, deserves to be set aside.

4. Shri Alok Kumar Yadav, learned Counsel for respondent No. 3 submits as under:

"(a) The fact that the respondent No. 3 was an employee of the petitioner is evident from the findings of fact recorded in paragraph Nos. 10 to 13 of the impugned award.

(b) The aforesaid findings have been recorded after due appreciation of evidences.

(c) Reappreciation of evidences on the basis of which findings of fact have been recorded in the impugned award, cannot be considered by this Court under Article 226 of the Constitution of India.

(d) The findings recorded in paragraph Nos. 10 to 13 are findings of fact based on consideration of relevant material and evidences on record.

(e) This Court cannot interfere unless the Labour Court has committed patent mistake in admitting evidences illegally or has made grave errors in law in coming to the conclusion on facts. There is no pleadings in this regard in the writ petition that the Labour Court has made patent mistake in admitting evidences illegally or has made grave errors in law in coming to the conclusion on facts.

(f) The fact that the respondent No. 3 worked as an employee of the petitioner is also evident from the attendance register, a copy of which has been filed along with counter affidavit. In the attendance register against the name of the respondent No. 3, the word "CL" has been mentioned and at some place it has been mentioned as "Casual Labour". In this attendance register of the petitioner the name of respondent No. 3 finds mention at serial No. 8 and above that, the name of seven employees are mentioned about whom there is no dispute at all that they are employees of the petitioner's company.

(g) The respondent No. 3 was retrenched without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947.

(h) The respondent No. 3 has produced himself as witness and was examined. He was also cross-examined by the petitioner. In his examination-in-chief as well as cross-examination, he has clearly stated that he is an employee of the petitioner company the respondent No. 3 has proved his case before the Labour Court by oral as well as by documentary evidences.

(i) The findings recorded in the impugned award are findings of fact based on relevant material and evidences on record and, therefore, no interference can be made in writ jurisdiction under Article 226 of the Constitution of India.

(j) The story set up by the petitioner that the respondent No. 3 was a contract labour is wholly incorrect. No evidence was brought on record by the petitioner either oral or documentary that the respondent No. 3 was a contract labour. On the contrary, the respondent No. 3 has led evidences which have not been disputed that the respondent No. 3 was getting payment of his wages from the

petitioner.

(k) No evidence was adduced by the petitioner that the alleged contractor was registered under the Contract Labour (Regulation & Abolition) Act, 1970 and was having a licence.

(l) No evidence was brought on record by the petitioner that the respondent No. 3 was employed for any particular project and on completion of which his service was terminated through non renewal of his contract of employment."

5. In support of this submission Sri Yadav has relied upon the judgments of Hon"ble Supreme Court in the case of Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., AIR 2014 SC 2258 : (2014) AIRSCW 3157 : (2014) 6 JT 190 : (2014) 3 LLJ 478 : (2014) 6 SCALE 119 FLR 20 (SC)(Paragraph-18 to 22 and paragraphs 28, 28.1 and 28.2) and in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 SC 2532 : (2011) 130 FLR 337 : (2011) 5 JT 333 : (2011) 3 LLJ 1 : (2011) LLR 785 : (2011) 4 SCALE 631 : (2011) 6 SCC 584 : (2011) 2 SCC(L&S) 153 : (2011) 2 UJ 1612 : (2011) AIRSCW 3455 .

6. Learned Standing Counsel supports the impugned award.

7. I have carefully considered the submissions of the learned Counsel for the parties and perused the records of the writ petition.

8. It is not in dispute that the respondent No. 3 started working in the establishment of the petitioner w.e.f. 1.12.1984. The case of the petitioner is that the respondent No. 3 was supplied as a contract labour by a contractor, Sri Om Prakash Yadav and his contract was merely for the period 1.12.1984 to 11.1.1985 and, thereafter, in the year 1990, the respondent No. 3 was supplied as a contract labour by the contractor Sri Dinesh Giri.

The stand taken by the petitioner was examined by the respondent No. 2 on the basis of oral as well as documentary evidences adduced by the parties.

9. After due consideration to the evidences on record, the respondent No. 2 recorded findings of fact that the respondent No. 3 was an employee of the petitioner. He worked from 1.12.1984 till 13.1.1991 and his service was terminated by the petitioner without complying with provisions of section 25-F of the Act. To arrive at the aforesaid findings, the respondent No. 2 referred to the evidences being Paper Nos. 2 and 3 of List-B1 which is an office order of the petitioner's company in which it is mentioned that the respondent No. 1 is engaged in QA Department and the amount may be paid to him and his signature is attested. This office order was signed by one Sri P.C. Tripathi, who was the Chief of QA and Training Department. Paper No. 3 is the verification of payment. The genuineness of these papers have not been denied by the petitioner. Apart from that Ex. E-21, E-22, E-20, E-23, E-24 and E-20-A referred and relied by the respondent No. 2 in paragraph-10 of the impugned award also supports the case of respondent No. 3.

10. In support of their claim that the respondent No. 3 is a contract labour of one Sri Om Prakash Yadav contractor, the petitioners have not filed before the respondent No. 2 any contract with the aforesaid alleged contractor. No license under the provisions of Contract Labour (Regulation & Abolition) Act, 1970, was filed. No evidence could be produced by the petitioners before the respondent No. 2 to establish that the respondent No. 3 was employed for a particular project and on completion of which his service was terminated through non-renewal of his contract. Copy of the attendance register filed as Annexure-CA-1 to the counter affidavit shows that the respondent No. 3 was employed by the petitioners since June 1984. The genuineness of this attendance register has not been denied by the petitioner. This paper was filed before the respondent No. 2 as Ex. 5 (paper No. 14B-2), which is attendance register of QA and training department of the petitioner. At serial No. 1 of this register the name of Sri P.C. Tripathi is mentioned, who is Chief of the department. In the attendance register of November 1984, the rank of respondent No. 3 is mentioned as Casual Labour. This attendance register contains the attendance of employees of the petitioner commencing from 1.6.1984 till December, 1985.

An office Corrigendum dated 2.6.1986 was also filed as evidence before the respondent No. 2 in which the name of respondent No. 3 is mentioned in Clause-7 at serial No. 7 as an staff under Sri P.C. Tripathi (Chief of QA Training Department). These evidences clearly support the case of the respondent No. 2.

11. Learned Counsel for the petitioner has heavily relied upon a corrigendum dated 3.6.1986 to submit that by the said corrigendum the entry at serial No. 7 of the office order dated 2.6.1986 mentioning the name of respondent No. 3 was deleted on the ground his name was mentioned inadvertently. Even if it is assumed that such a corrigendum was issued, this does not indicate or establish that the respondent No. 3 was not an employee of the petitioner company rather it indicates that he was in employment of the petitioner's company as on the date on which the office order dated 2.6.1986 was issued. Apart from that the aforesaid Sri P.C. Tripathi has certified that the respondent No. 3 had worked in the establishment of the petitioners from 1.12.1984 to 13.1.1991 under him. It is relevant to mention here that the aforesaid Sri P.C. Tripathi was the Chief of the QA and Training Department and the respondent No. 3 was working under him which fact is also evident from the attendance register as well as office order dated 2.6.1986 and other evidences on record.

12. In view of the aforesaid brief discussions with regard to the evidences on the basis of which the respondent No. 2 passed the impugned award, holding the respondent No. 2 to be in employment of the petitioner w.e.f. 2.6.1986 to 13.1.1991 and the termination of service of the petitioner to be in breach of section 25F of the Act; does not suffer from any infirmity.

13. The scope of Article 226 of the Constitution of India in the matter of award of the Labour Court is limited. This Court can interfere with the award in case, the decision has been arrived at in gross violation of the legal principles. This Court

can interfere with the factual aspect placed before the Labour Court only when it is convinced that the Labour Court has made patent mistake or has committed grave error in law in coming to the conclusion on facts. I do not find existence of any such circumstances to interfere with the impugned award in exercise of power under Article 226 of the Constitution of India.

14. The petitioners also failed to bring any evidence on record before the respondent No. 2 with reference to the provisions of Contract Labour (Regulation & Abolition) Act, 1970 in support of their case that the respondent No. 3 was a contractor's labour.

15. In view of the above discussions, I do not find any infirmity in the impugned award. The writ petition is wholly misconceived and, therefore, deserves to be dismissed. In result, the writ petition fails and is hereby dismissed with cost of Rs. 5,000/-, which shall be deposited by the petitioner within two months with the High Court, Legal Cell Authority.