
(2014) 04 UK CK 0025

In the Uttarakhand High Court

Case No : W.P. Nos. 1021, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1114, 1115, 1116, 1117, 1121, 1122, 1123, 1124, 1125, 1130, 1131, 1132, 1158, 1159, 1160, 1161, 1168, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1404, 1405, 1407, 1408, 1409, 1494, 1495, 1496,

BHEL

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2014) 142 FLR 798 : (2014) 3 LLJ 594

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : B.P. Nautiyal, Senior Advocate assisted by Manokam Nautiyal, Advocate for the Appellant; R.C. Arya, Standing Counsel and M.C. Pant, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—All these present petitions involve identical questions of facts and law, therefore, all the petitions were taken up for hearing together and are being disposed of by this common judgment with the consent of learned counsel for the parties. To understand the controversy and to examine the impugned Award, facts of Writ Petition (M/S) No. 1097 of 2011 are being taken as a leading case. Present petition is filed assailing the Award dated 1.11.2009 passed by the Labour Court, Haridar, whereby Reference was answered by the learned Labour Court in favour of the workman against the employer-I i.e. the petitioner, herein, directing the reinstatement of the workman forthwith, however, without any back-wages.

2. Undisputedly, a writ petition being Civil Writ Petition No. 7088 of 1999 was preferred before the Delhi High Court, which was disposed of vide judgment dated 8.11.2001. Judgment dated 8.11.2001 reads as under:

"The petitioners herein contend that although initially they were engaged through a contractor to work for respondent No. 2, but for all intent and purposes they are the direct employees of respondent No. 2 and, therefore, their services should be regularized from the date of their initial appointment. It is contended that the agreement between the principal employer and the contractor is sham and a camouflage in order to deprive the petitioners from getting their legitimate dues and benefits. In support of the aforesaid contention, some of the petitioners rely upon Notification issued by the Govt. of India, Dt. 9.12.1976 regarding prohibition of employment of contract labour. The petitioners also rely upon a decision of the Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled],

Counsel appearing for the petitioners states that Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 is also applicable to the facts and circumstances of the present case. Similar issues as raised in the present petition were also raised before Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., In sub-paragraph 5 of para 124 of the said decision following observations were made by the Supreme Court:

"5. On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labourers or otherwise, in an industrial dispute brought before it by any contract labourer in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for work of the establishment under a genuine contract or is mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labourer will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it."

In my considered opinion, the ratio of the aforesaid observations and directions of the Supreme Court is squarely applicable to the facts and circumstances of the present case. In terms of the said observations, this writ petition is not entertained and is accordingly disposed of. The petitioners are, however, given the liberty to approach the appropriate forum in accordance with law and in accordance with the observations of the Supreme Court in the aforesaid decision of Steel Authority of India and Others etc. etc. v. National Union Waterfront Workers and Others (supra). It is also directed that in case the petitioners approach the Central Government Industrial Tribunal, the matter shall be examined by the said Tribunal and all efforts shall be made by the said Tribunal to dispose of the reference in accordance with law as expeditiously as possible."

3. After the judgment passed by Delhi High Court, workman approached the

appropriate Government for redressal of grievances, whereupon, a Reference was made to the learned Labour Court, Haridwar to the effect whether the termination of the workman by the employer was justified and legal, and if not, what relief workman was entitled for.

4. As per the case pleaded before the Labour Court, workman had been working with the BHEL/Employer-I right from January 1997 till October, 2001. All of a sudden, Employer-I/petitioner, herein, discontinued the services of the workman. Workman had worked for more than two hundred forty days in twelve calendar months, therefore, compliance of Section 6N of the U.P. Industrial Disputes Act was mandatory to be followed. It was further stated that with ulterior motive to deprive the workman from all the benefits, sham labour contract was shown having been executed between the petitioner/Employer No. I and contractor/Employer No. II. Workman was doing duties with regular employees/workmen of the petitioner under the command, control and management of the petitioner, therefore, there was relationship of employer - servant between the petitioner and workman/respondent, herein.

5. Before the learned Labour Court, Employer-I i.e. the petitioner, herein, took a plea that petitioner obtained license/permission u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. Under the license/permission issued u/s 10(1), employer-1 was getting labourers through contractor and workman/respondent No. 4, herein, was never engaged by the petitioner, however, he was labour of the contractor and was being sent to do the work by the contractor under his supervision and control. It was further contended that since workman is a labour of the contractor, therefore, he was not the employee of the petitioner, therefore, was not entitled to invoke provisions of Industrial Disputes Act.

6. Learned Labour Court found that workman was attending duties alongwith regular employees of BHEL and was performing the same duties under the control, management and guidance of BHEL, therefore, applying the principles laid down by the Constitution Bench of Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., held that the alleged contract was sham and camouflage and no benefit thereof could be extended in favour of employer- I/ petitioner, herein, and thus the workman would be treated as an employee of the employer-I i.e. the petitioner, herein. It was further held that workman has worked for more than two hundred and forty days in twelve calendar months, therefore, retrenchment of workman was hit by Section 6N of the U.P. Industrial Disputes Act.

7. Feeling aggrieved, employer-I/BHEL has approached this Court assailing the Award.

I have heard Mr. B.P. Nautiyal, learned Senior Counsel assisted by Mr. Manokam Nautiyal, Advocate for the petitioner and Mr. M.C. Pant, learned counsel

appearing for the workman, and have carefully perused the record.

8. The facts of the case have already been narrated hereinbefore. Hon"ble Apex Court in the case of Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Others (supra), has held as under:

"107. An analysis of the cases, discussed above, shows that they fall in three classes;(i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract, labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the Courts have held that the contract labour would indeed be the employees of the principal employer."

As per the dictum of Hon"ble Apex Court, if question arises as to whether workman is labourer of the contractor, Court has to find out as to whether alleged labour contract was genuine or was a sham transaction or camouflage. To reach to such conclusion, Court must keep in mind as to whether workman working in the establishment was in the direct control, management and guidance of the employer-I or was under the management, control and guidance of the contractor.

9. Undisputedly, all the petitioners, herein, were performing the skilled/unskilled duties with the regularly appointed staff of BHEL in BHEL Factory Premises and were reporting on duties alongwith regular employees to perform identical duties and had been working for fixed hours alongwith regular employees of BHEL. Therefore, it can very well be said that they were under the command, control, management and guidance of BHEL and contractor had absolutely no control over the workmen in performing the duties in BHEL premises. Therefore, in my considered opinion, there was relationship of employer and servant between the BHEL and present workmen.

10. On being asked repeatedly, Mr. B.P. Nautiyal, learned Senior Counsel appearing for the employer/BHEL could not point out as to when alleged contract was awarded in favour of the contractors; to supply how many labourers and to do what type of work and for which period, therefore, general allegation that workmen are the labourers of the contractors cannot be accepted for want of clear cut particulars as desired by this Court and not furnished by Mr. B.P.

Nautiyal, learned Senior Counsel. Therefore, I have no hesitation to hold that alleged contract/agreement was merely an eyewash, sham transaction and camouflage. Having perused entire evidence and material on record, I do not find any reason to disturb the finding of fact that workmen have continuously worked for more than two hundred and forty days in twelve calendar months. Consequently, all the writ petitions fail and are hereby dismissed, however, no order as to costs.

All the Interim Relief Applications and other pending applications also stand disposed of accordingly.

Let copy of this judgment be placed in all the connected petitions.