

(2018) 02 MP CK 0172
In the Madhya Pradesh High Court
Case No : 11638 of 2015

Cement Corporation of India Ltd.

APPELLANT

Vs

Shri Dharendra Singh

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Sick Industrial Companies (Special Provisions) Act, 1985, Section 15 - Re

Citation : (2018) 02 MP CK 0172

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Anoop Nair, P.R. Bhawe, R.C. Shri @APPELLANT @hash tava

Final Decision : Allowed

Judgement

1. The petitioner has filed the present writ petition under Article 227 of the Constitution of India challenging the order dated 26/02/2015 passed by

the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur.

2. Cement Corporation of India is a Public Sector Undertaking. The Corporation had certain Cement Factories in Madhya Pradesh which stands

closed. The corporation has become sick company within the meaning of Section 15 of the Sick Industrial Companies (Special Provisions) Act,

1985. In accordance with the provisions of Section 15 of the said act, a reference was made to the Board of Industrial and Financial

Reconsideration (BIFR) and the same was registered as Case No.501/1996. The BIFR vide order dated 08/08/1996 declared the Corporation

as a sick company and appointed IFCI as the operating agency for submitting

rehabilitation scheme. The respondents submitted an application on 06/08/1996 for the purpose of Graduate Sales Trainee at Sales Office Indore. As there was a requirement of casual/ temporary nature of work, the duration could not be anticipated because it was basically for recovery of amount, therefore, under special circumstances, sanction was obtained for employment of the respondent on daily wages for 89 days. The appointment was purely on temporary nature and on daily wages basis and as soon as the requirement of casual work was completed, the appointment of the respondent should be automatically terminated. The respondent was engaged for 89 days for execution of casual nature of job at the wages declared by the State of Madhya Pradesh. Being aggrieved by the aforesaid termination, the respondent raised a dispute before the Central Government. The Central Government vide order dated 30/03/2001 referred a industrial dispute to the CGIT, Jabalpur.

3. The workman/respondent had filed his statement of claim before the Tribunal. The petitioner filed written statement and after recording the evidence, the Tribunal has passed an award dated 28/01/1999. Against the said order, the petitioner has preferred Writ Petition No.9348/2009.

The said writ petition was allowed vide order dated 04/05/2011 and the matter was remanded back to the CGIT, Jabalpur with direction to

decide whether the sales department of Corporation is a part of the Corporation or is a separate department. The Tribunal thereafter passed an

order dated 26/02/2015 holding that the Sales Department was not the part of the Cement Corporation of India and directed for reinstatement of

the respondent with back wages. Being aggrieved by that award, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner argues that the Tribunal has misinterpreted the judgment passed by this Court in the case of Jamul Cement

Works, Jamul Vs. President, State Industrial Court, M.P., Indore and others reported in 1968 MPLJ 95. He submits that Sales Department is

part of the Corporation and is not a separate department, therefore, the provisions of MPIR Act would be applicable to the petitioner-company

and not the Industrial Disputes Act, thus, the whole reference is made by the CGIT is without jurisdiction and contrary to law. As per the

respondent, there are only four employees working in the Sales Department and

it would come under the purview of Industrial Disputes Act, 1947. He further submits that the Tribunal has failed to consider that the Cement Corporation has been declared as a sick industry, therefore, a reference could not have been made. The nature of work of the respondent was purely of temporary nature and, therefore, he has not acquired any status of the employee either of the Industrial Disputes Act or MPR Act.

5. The respondent has filed reply and in the reply, the respondent has stated that his termination from the service amounts to unfair labour practice as per the finding of the tribunal.

6. Learned senior counsel for the respondent supports the award passed by the Tribunal and submits that the Tribunal has not committed any error in passing the impugned award. He further submits that the sales department of the cement factory is a separate department and, therefore, the provisions of Industrial Disputes Act would be applicable in the case of the respondent, therefore, the reference was rightly made by the Central Government to the CGIT. He relied upon the judgment passed by the Division Bench of this Court in the case of Jamul Cement Workers, Jamul (supra).

7. Heard learned counsel for the parties and perused the record.

8. In the present case, the respondent was working on temporary basis in the petitioner-corporation. His services were terminated and, therefore,

a reference was made under Section 10 of the ID Act before the Central Government. The Central Government has referred the dispute to the

CGIT. Before the CGIT the respondent had preferred his statement of claim and the petitioner had also filed written statement and after hearing

both the parties, initially the award was passed in favour of respondent/employee. The said award was challenged before this Court by filing Writ

Petition No.9348/2009. The said writ petition was allowed by this Court vide order dated 04/05/2011 and the matter was remanded back to the

Tribunal to decide the matter on the following directions :

Therefore, the question to be decided is whether the sales department of Corporation should be held to be a separate or distinct "industry" for the purposes of applicability of the 1960 Act or the Cement Corporation as whole be treated as a single "industry" for the purpose.

9. Thereafter the Tribunal after hearing both the parties has held that the provisions of M.P.I.R. Act would not be applicable in the present case

because the sales depot is situated at far away place and, therefore, it cannot be said to be a cement industry. Against the said award, the

petitioner has filed the present writ petition.

10. The word "industry" has been defined under Section 2(19) of the M.P.I.R. Act which reads as under :

(19) ""Industry"" means-

(a) any business, trade, manufacture, undertaking or calling of employers;

(b) any calling, service, employment, handicraft, or industrial occupation or a vocation of employees; and includes-

(i) agriculture and agricultural operations;

(ii) any branch of any industry or group of industries which the State Government may, by notification, declare to be an industry for the purposes of

this Act;

11. As per the said definition, the industry means any business, trade, manufacture, undertaking or calling of employers. In the present case, the

respondent was not employed in the Cement Factory but he was working in the sale depot. The Division Bench of this Court in the case of Jamul

Cement Works, Jamul (supra) has held that the constructional work of the Cement Factory is not being an "industry" as defined under Section

2(19) of the MPIR Act or a part of the cement factory. The employees working on constructional sight cannot be regarded as employee within the

definition of Section 2(13) of the MPIR Act. The Division in the above case has further held in para-5 of its judgment as under :

5. In our judgment, the contentions advanced on behalf of the petitioner must be given effect to. As is clear from Section 1(3) of the Act, the

provisions of the Act, other than sections 1 and 112, do not apply to all industries or undertakings in any industry, but apply to those industries and

undertakings in any industry as may be notified under section 1(3). The notification issued on 31st December, 1960 under Section 1(3) of the Act

applied the provisions of the Act, other than sections 1 and 112, inter alia to "cement". The word ""cement"" means cement manufacturing industry

and activities or operations incidental to the main industry of manufacturing cement. The setting up and construction of a cement factory is no doubt

essential before cement can be manufactured and thereafter distributed and sold. But the construction of a cement factory cannot in any way be

likened to any activity or operation in the manufacture of cement or its distribution or sale.

12. As per the said judgment, for setting up and construction of a cement factory is no doubt essential before cement can be manufactured and

thereafter distributed and sold. But, the construction of a cement factory cannot in any way be likened to any activity or operation in the

manufacture of cement or its distribution or sale. Thus, the construction of cement factory is a different activity than its operation or sale. In the

present case, as the respondent is engaged in a sale depot which can be said to be an incidental to the main nature of manufacturing cement. The

word "cement" has been defined as manufacturing industry and activities or operations incidental to the main industries of manufacturing cement.

The distribution and sale of the cement is the incidental operation to the main industry of manufacturing cement because the sale is essential part of

the manufacturing as unless and until the product is sold, the only manufacture would be futile, therefore, the sale depot of the petitioner corporation

should be treated as a part of the cement factory, hence, the provisions of M.P.I.R. Act would be applicable in the case of the petitioner-

corporation. Thus, the reference made by the Central Government under the Industrial Disputes Act is without jurisdiction.

13. Accordingly, this writ petition is allowed. The award dated 26/02/2015 passed by the CGIT, Jabalpur is hereby set aside. However, the

respondent is free to move an appropriate application under the M.P.I.R. Act.