

(2014) 07 CAL CK 0048
In the Calcutta High Court
Case No : M.A. No. 034 of 2014

Chinnareddy

APPELLANT

Vs

The Director of Transport

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 CALLT 317 : (2014) 4 CHN 424 : (2015) 144 FLR 622 :
(2015) 2 WBLR 938

Hon'ble Judges : Subhro Kamal Mukherjee, J;Indrajit Chatterjee, J

Bench : Division Bench

Advocate : Babit Das, Advocate for the Appellant; Anjili Nag, Advocate for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against the judgment and order dated January 30, 2014 passed by the Hon"ble Single Judge of this Court in WP No. 324 of 2013. By the order impugned, the Hon"ble Single Judge set aside the award dated April 29, 2013 passed by the Labour Court at Port Blair, Andaman and Nicobar Islands, in I.D. Case No. 31 of 2003.

2. The 26 writ petitioners, who were members of State Transport Workers Union, Haddo, applied for payment at the rate of 1/30th of the pay at the minimum of the relevant pay scale and dearness allowance for working eight hours per day in accordance with the Government of India circular dated June 07, 1988.

3. The petitioners contended that they were appointed by their employer as Daily Rated Mazdoor with effect from September 10, 1992, but, their services were terminated with effect from July 02, 2001. It was contended by them that though they were appointed as Daily Rated Mazdoor, they were entrusted with perennial nature of works as regular workers working under their employer. They requested for regularization of their service, but, their request was turned down.

4. The employer contended, inter alia, that the Directorate of Transport,

Andaman and Nicobar Administration, engaged those Daily Rated Mazdoors for a specific period on the basis of requirement of various units/stores/sections of the department. However, they were engaged to assist the regular employees, who were allotted with different nature of works. It was categorically stated that the Daily Rated Mazdoors were not allotted any regular nature of works. It was stated, further, that due to non-availability of vacancies, they could not be accommodated permanently in the department.

5. Since dispute between the parties could not be resolved, an industrial dispute was referred to for adjudication concerning the claim of those 26 Daily Rated Mazdoors for payment at the rate of 1/30th of the pay at the minimum of the relevant pay scale and dearness allowance for working eight hours per day.

6. Both parties adduced oral evidence before the tribunal.

7. One of the workmen, namely, Zameer Ahmed deposed on behalf of the workmen. He has stated in his deposition that they were working in the status of Daily Rated Mazdoor. In the cross-examination, he has stated that they had worked in the garage to assist as assistant with the regular employee.

8. On behalf of the employer, one Jayant Adhikari deposed. He stated that he was the chargeman under whom those persons worked as daily rated mazdoor. He stated that they were engaged to assist the Mechanic and Assistant Mechanics for repairing works of vehicle on daily rated basis. However, in his cross-examination, he categorically admitted that "Those DRMs as stated above used to work 8 hours per day. The manner of work done by them was regular nature of the work to be done in the department."

9. Based on such admission, the labour court passed the Award in favour of the workmen holding, inter alia, that they were entitled to get 1/30th pay in minimum of the relevant scale and other allowances as they were entitled with effect from their respective dates of appointment.

10. The employer was aggrieved and, therefore, approached this Court by filing an application under Article 226 of the Constitution of India. By the impugned judgment and order dated January 30, 2014, the Hon''ble Single Judge allowed the said application under Article 226 of the Constitution of India and set aside the award passed by the tribunal. The Hon''ble Single Judge held that His Lordship could not find any indication that the works done by these workmen were regular in nature excepting the isolated statement made by the employer''s witness.

11. We have heard Ms. Babita Das, learned advocate for the appellant and Mrs. Anjili Nag, learned advocate for the respondents.

12. While Ms. Das, submits that in view of the admission by the witness of the employer, there was no occasion for the Hon''ble Single Judge to doubt the claim of the workmen that they were performing the same nature of duties as that of the regular employees.

13. Mrs. Anjili Nag, per contra, submits that excepting the statement of the chargeman, there was no indication on the records to show that those workmen performed the regular nature of duties. On the contrary, she submits that it is on record that the Mazdoors were appointed to assist the Mechanic and Assistant Mechanics to perform their duties.

14. With respect to the Hon''ble Single Judge, we are of the opinion that His Lordship had no occasion to reverse the finding of fact arrived at by the labour court when such finding is neither perverse nor illegal. Normally, the labour court or the industrial tribunal, as the case may be, is the final court of fact.

15. The admission of the employer's witness was based on his personal knowledge. Such admission is a substantive evidence of fact admitted. The said witness unambiguously stated that those workmen performed the similar nature of works as that of the regular workmen for eight hours.

16. In a proceeding under Article 226 of the Constitution of India, the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The power of the High Court is supervisory. Article 226 of the Constitution of India is not intended to enable this Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken.

17. Thus, the Labour Court, on evidence, recorded a finding of fact.

18. We are of the opinion that such finding of fact is neither perverse nor illegal requiring interference by the High Court in a writ jurisdiction.

19. Thus, the impugned judgment and order passed by the Hon''ble Single Judge is set aside and the Award is restored to its original file.

20. The appeal is, thus, allowed. The impugned judgment and order dated January 30, 2014 passed by the Hon''ble Single Judge is set aside. The award is restored. We make no order as to costs.

Indrajit Chatterjee, J.

I agree.