

(2000) 02 PAT CK 0085

In the Patna High Court

Case No : C.W.J.C. No's. 804 of 1996 (R) and 2576 of 1997 (R) and 3655 of 1997 (R)

Damodar Valley Corporation and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-2000

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (2000) 48 BLJR 1809 : (2000) 87 FLR 219 : (2000) 2 LLJ 1439 : (2000) 4 PLJR 172

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Bhowmik and Hatim, for the Appellant; P.K. Sinha, for the Respondent

Judgement

M. Y. Eqbal, J.—All these three writ applications involving common question of law and facts have been heard together and are being disposed of by this common judgment.

2. C.W.J.C. No. 804/1996 (R) has been filed by the petitioner Damodar Valley Corporation (in short DVC) against the respondents, who are the workmen, challenging the order passed by the Labour Commissioner, Bihar whereby he has held that the respondent Nos. 4 to 24 are entitled to get regular pay at par with the regular employees of the petitioner DVC.

3. Similarly C.W.J.C. No. 2576/1997(R) has been filed by the petitioner DVC for quashing the order dated December 19, 1996 passed by the Labour Commissioner, whereby he has held that the Labour Department, Bihar should take steps for abolition of contract labour u/s 10 of the Contract Labour (Regulation and Abolition) Act after holding that the respondent Nos. 4 to 24 are working for a considerable period in a permanent nature of job and are entitled to be included in the seniority list along with other employees.

4. During the pendency of the aforementioned C.W.J.C. No. 804/1996(R) the respondent-workmen filed a contempt petition being M.J.C. No. 323/1996(R) for initiation of a contempt proceeding against the petitioner DVC for the wilful violation and disobedience of the direction of this Court passed in the judgment dated May 26, 1995 in C.W.J.C. No. 1801/1994(R). However, on the prayer of the workmen, this Court passed an order dated August 21, 1997 in M.J.C. No. 323/1996 (R) and allowed the prayer of the workmen to convert the contempt application into a writ application Hence, the said contempt-etition has been converted into a writ petition being C.W.J.C. No.3655/1997(R).

5. All these aforementioned three writ applications have, in fact, arisen out of the judgment passed by this Court in C.W.J.C. No. 1801/1994(R). This writ application was filed by the workmen (respondent Nos. 4 to 24 in C.W.J.C. No. 804/1996(R) making a prayer to regularise their services who are engaged in civil maintenance under the petitioner-DVC and further prayed for "equal pay for equal work" and for a declaration that the workmen engaged in civil maintenance are covered under the Notification issued on August 3, 1997 and July 14, 1987 u/s 10 of the Act.

6. From perusal of the judgment passed in C.W.J.C. No. 1801/1994(R), the facts disclosed therein are that the respondent-workmen are contract labourers and are engaged in maintenance of water supply, sanitary works, structural repairs, pump-house building, etc. The said workmen have been performing civil maintenance work from 1997. Their claim was that they have been working continuously without any break in service in the same power house.

7. Admittedly, the Government of Bihar in exercise of power conferred by Sub-section (1) of Section 10 of the Act prohibited the working of contract labourers in any process/operation of other work relating to the following job in all the thermal power house establishments in the State of Bihar with effect from the date of publication of the notification in the Bihar Gazette:

- "1. Work relating to the clearing of machine, conveyor belt;
2. Work relating to the clearing of thermal power houses;
3. Work relating to the clearing of crusher house, work relating to the clearing of bunker and
4. Work relating to the clearing of trenches."

8. The aforesaid notification dated October 3, 1987 was followed by another notification dated June 19, 1993 and thereafter on October 7, 1993, a memorandum of settlement was made between the CTPS and the representatives of the various groups of contract labourers that a seniority list of all the contract labourers engaged in the perennial nature of work will be prepared and all the contract labourers will be absorbed phase wise. Accordingly, the DVC sanctioned 200 posts of mazdoors and 15 number of supervisors for NTPC, DVC in replacement of existing contract labourers in the existing scale of

pay and allowances as admissible under DVC Rules. The case of the workmen was that representation was filed to the Chairman and the Commissioner of Labour, Bihar, Ex officio member of the Advisory Board representing that the nature of job done by the workmen concerned are of permanent and perennial in nature and they have been working since 1975 under various contractors for cleaning inside the power house. They further represented that the State Advisory Board considered the abolition of contract labour system in entire CTPS establishment of all kinds of nature of contract labour and recommended for abolition of the same but while abolishing the contract labour, the DVC refused to consider the case of these workmen for regular absorption on the ground that maintenance of civil work is excluded under the notification. The aforesaid writ application being C.W.J.C. No. 1801/1994(R) was disposed of by this Court with a direction to the Labour Commissioner, Bihar to decide as to what relief the workmen should get. The workmen concerned were directed to file representation before the Labour Commissioner, Bihar, who shall decide the same on merit within two months. So far as absorption of the workmen was concerned, in terms of the memorandum of settlement the workmen were also directed to file representation before the Labour Commissioner, Bihar who shall decide the claim of the workmen in accordance with law.

9. It appears that in terms of the aforesaid judgment the workmen filed representation before the Labour Commissioner. The Labour Commissioner on receipt of the representation appointed the Deputy Labour Commissioner, Bokaro for investigation into the matter and to submit a report. The Deputy Labour Commissioner submitted report to the Labour Commissioner with a finding that the workmen concerned are working in the establishment since 1975 and from 1977 they are working under one contractor continuously and for sufficient duration and the nature of job is permanent and perennial. The Labour Commissioner thereafter heard both the parties and passed an order holding that these 21 workmen are doing the permanent nature of job and they are entitled to the same wages as are paid to the regular workmen in the lowest grade. The petitioner DVC, therefore, challenged the said order dated December 6, 1995 by filing C.W.J.C. No. 804/1996(R).

10. Mr. P.K. Bhowmik, learned Counsel appearing on behalf of the petitioner-Damodar Valley Corporation, assailed the order/decision passed by the respondent No. 2 as being illegal, arbitrary and without jurisdiction. Learned Counsel firstly submitted that the respondent No. 2 was not at all competent to decide the matter and even if he was competent the order passed by him is vitiated in law for non-consideration of the case of the petitioner-DVC. It is stated that the respondent No. 2 has recorded a finding of fact without giving any opportunity of hearing to the petitioner to adduce evidence. Learned Counsel further developed his argument and raised objection with regard to the authority of the State Government to act as an appropriate Government in the matter relating to the affairs of the petitioner. According to the learned Counsel, the Central Government is only the appropriate Government and not the State

Government for the petitioner and accordingly, it is the Central Government who has to take a decision on the recommendation of the Labour Minister. Learned Counsel also argued on the question of promissory estoppel and the principle of res judicata and submitted that although the earlier notifications were issued by the State Government as an appropriate Government, the petitioner cannot be stopped from raising the question with regard to the validity of such notification issued by the State Government as an appropriate Government.

11. On the other hand, Mr. P.K. Sinha, learned Senior Counsel appearing on behalf of the workmen concerned, firstly drew my attention to the relevant provisions of Damodar Valley Corporation Act vis-a-vis Government of India Act, 1935 and submitted that the DVC Act may be the Central Act but the subject is in the State list and not in the concurrent list or the Central list. According to the learned Counsel, therefore, appropriate Government is the State Government. Learned Counsel further drew my attention to the earlier notifications and submitted that those notifications issued by the State Government as an appropriate Government has been given effect to by the petitioner without challenging the validity of such notification. Learned Counsel further submitted that the workmen concerned have been working for the last 22 years and they deserve to be immediately regularised in service. Learned Counsel further submitted that by virtue of amended definition of Section 2(a) of the Contract Labour (Regulation and Abolition) Act and the notification dated July 17, 1998 issued by the Central Government the ratio decided by the Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , will have no application.

12. Before appreciating the rival contentions of the learned Counsels, it would be useful to take notice of the admitted facts of the case. The workmen concerned through their Union, namely, Janta Mazdoor Sangh, filed C.W.J.C. No. 1801/1994(R) for a direction upon the respondents to regularise the services of the workmen engaged in CTPS inside power house, civil maintenance, from the date of their appointment and to pay "equal pay for equal work" and further to declare that the notifications issued on August 3, 1987 and July 19, 1987 u/s 10 of the Act on the recommendation made by the Bihar State Advisory Contract Labour Board covers the case of the workmen also who are engaged in the civil maintenance. The writ application was disposed of with a direction to the Labour Commissioner, Bihar to consider the representation that may be filed by the workmen and to take a decision with regard to their absorption in service by way of regularisation. The Labour Commissioner, Bihar appointed the Deputy Labour Commissioner for investigation into the matter and the Deputy Labour Commissioner, after thorough investigation, submitted his report to the Labour Commissioner, who recorded a finding that the workmen have been working in the establishment since 1975 and from 1977 they are working under one contractor continuously. It appears that the Labour Commissioner after hearing the management-DVC's representatives and the Union of the workmen, passed an order on December 6, 1995 holding that these 21 workmen are doing the

permanent nature of job and they are entitled to the same wages as are being paid to the regular workmen in the lowest grade of the workmen, i.e., Rs. 1430-1,850/-.

13. The impugned order passed by the Labour Commissioner has been challenged by the petitioner in this writ application on various grounds. At this stage, it is worth to mention here that the Labour Minister, Bihar also passed an order on December 19, 1996 taking into consideration the judgment of this Court passed in C.W.J.C. No. 1801/1994(R). The Labour Minister, in his order, held that these, workmen are working for a considerable period and the nature of job is permanent. With regard to regularisation, the Labour Minister observed that the matter should be referred u/s 10 of the Act for abolition of such nature of work if not already covered under the earlier recommendation and earlier notification. It further appears that the matter was then referred to the State Advisory Contract Labour Board and the same was heard in the meeting of the Board where the parties were represented.

14. So far as question of authority of the State Government to act as an "appropriate Government", as challenged by the petitioner, I am of the view that the petitioner cannot be allowed to raise such objection at the subsequent stage when the earlier notifications time to time issued by the State Government as an appropriate Government abolishing certain nature of work in the different establishment of the petitioner was given effect to without questioning its validity.

15. Admittedly, the workmen concerned have been working for the last 24-25 years and for the purpose of abolition of contract labourers more than 200 posts were sanctioned and several workmen working in the establishment doing similar nature of job have been regularised in service. Admittedly, the nature of job which the workmen concerned are doing is the same to that of the nature of job the other workmen are doing and whose services have been regularised pursuant to the earlier notifications.

16. A similar question arose for consideration before the Supreme Court in the case of Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another, . The fact of that case was that the workmen called as catering cleaners of Southern Railway claimed their absorption as regular employees of the principal employer namely, the Southern Railway on the ground that the contract system has been abolished in almost all the other Railways for the reason that the work is permanent and perennial in nature. The claim of the workmen was refuted by the Railway administration taking the plea that it would not be possible to abolish the contract labour system because the nature of cleaning work in the catering units of Southern Railway was fluctuating and intermittent. The matter was inquired into by a High Power Committee appointed by the Ministry of Railway and the said committee was of the view that the job of cleaning in Railway Catering unit is of permanent nature. The Committee, therefore, recommended that the Government should review the present practice of employment of cleaners through contractors and consider their employment

directly by the Railway. Considering all facts and circumstances of the case, the apex Court observed as follows *Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another*, :

"10. On the facts presented to us and on the report of the Parliamentary Committee of petitions, it appears to be clear that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and so requirement (A) of Section 10(2) is satisfied, that it is of a perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen in most Railways in the country and so requirement (c) is satisfied and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Section 10(2) appear to be satisfactorily accounted for. In addition, we have the factor of profitability of the catering establishments. On these facts, the petitioners straightaway invite us to issue a mandamus directing the Central Government to abolish the contract labour system under which cleaners in catering establishments and pantry cars are at present employed in the Southern Railway. But, we refrain from doing so because u/s 10, Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or their work in any establishment. The appropriate Government is required to consult the Central Board or the State Board as the case may be before arriving at its decision. The decision, of course, will be subject to judicial review. But, we do not think that we will be justified in issuing the mandamus prayed for unless and until the Government fails or refuses to exercise the power vested in it u/s 10. In the circumstances, the appropriate order to make in the present cases is to direct the Central Government to take appropriate action u/s 10 of the Contract Labour (Regulation and Abolition) Act in the matter of prohibiting the employment of contract labour in the work of cleaning catering establishments and pantry cars in the Southern Railway. This must be done within six months from today. Without waiting for the decision of the Central Government the administration of the Southern Railway will be free of its own motion to abolish the contract labour system and to regularise the services of those employed in the work of cleaning catering establishments and pantry cars in the Southern Railway. In any case, the administration of the Southern Railway will refrain, until the decision of the Central Government u/s 10, from employing contract labour. The work of cleaning catering establishments and pantry cars will be done departmentally by employing these workmen who were previously employed by the contractor on the same wages and conditions of work as are applicable to those engaged in similar work by the Western Railway. If there is any dispute whether an individual workman was or was not employed by the contractor such dispute shall be decided by the Deputy Labour Commissioner, Madras. Any further directions may be sought, if necessary, from the Madras High Court. If the Central Government does not finally decide the question within six months from today, the Southern Railway administration will within three months

thereafter absorb the workmen into their service and regularise their services."

17. As noticed above, in the instant case, in compliance of the direction of this Court in the earlier writ petition the matter was enquired into and the Labour Commissioner, after hearing both the parties, came to a finding that these 21 workmen are doing permanent nature of job and they are entitled to the same wages as are being paid to the regular workmen.

18. It is stated in the counter affidavit that in spite of order passed by the Labour; Commissioner the petitioner-management has not implemented the order rather the workmen have been categorised under Category-D and pay scale has been fixed at Rs. 750-946/-. It further appears that the Labour Minister also came to a finding that the workmen concerned have been working for a considerable period of permanent nature of job and they deserve to be regularised and, therefore it was directed that the matter should be referred u/s 10, of the Act for abolition of contract labour. Accordingly, the Contract Labour Advisory Board recommended the case of the workmen concerned for issuance of notification u/s 10 of the Act.

19. Having regard to the entire facts and circumstances of the case, I am of the view that the workmen concerned are entitled to the relief in terms of the order and direction passed by the Apex Court in the case of Catering Cleaners of Southern Railway (supra): Accordingly, I hold that the work of civil maintenance of CTPS in which the workmen concerned are engaged is of a perennial nature and all the necessary requirements of Section 10 of the Act are satisfied. This writ application is therefore, disposed of with a direction to the Central Government/State Government to take appropriate action u/s 10 of the Contract Labour (Regulation and Abolition) Act in the matter of prohibiting the employment of contract labour in the work of civil maintenance in CTPS of the petitioner. This must be done within four months from the date of receipt of a copy of this judgment/order. I further direct the petitioner-DVC to take a decision to regularise the services of the workmen concerned (respondents) without waiting for a decision of the appropriate Government. I further direct that if the appropriate Government fails to come with a notification within four months then the petitioner shall take a decision and regularise the services of the workmen concerned (respondents) within two months thereafter.

20. In the result, C.W.J.C. Nos. 804/1996 (R) and 2576/1997(R) are dismissed while C.W.J.C. No. 3655/1997(R) is disposed of in terms of the aforesaid direction.