
(2005) 04 JH CK 0030

In the Jharkhand High Court

Case No : C.W.J.C. No. 1916 of 1995 (R)

Damodar Valley Corporation

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Citation : (2005) 3 LLJ 842 : (2005) 3 JCR 117

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

Bench : Single Bench

Advocate : S.B. Gadodia, S. Choudhary and C.S. Singh, for the Appellant; Biren Poddar and Nisha Thakur and M.J. Rahman, JC to GP II, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner which is the Management of Damodar Valley Corporation (in short DVC), has challenged the award dated 21.2.1994 passed by the Presiding Officer, Labour Court, Bokaro Steel City, Bokaro in Reference Case No. 5 of 1991 whereby he has answered the reference in favour of the concerned workmen.

2. It appears that the Government of Bihar, by Notification dated 20.2.1991, referred the following dispute to the Labour Court for adjudication :

"Whether 81 (eighty one) temporary workmen of the attached list working in Bokaro and Chandrapura Thermal Power Stations are entitled for regularization? If so, since when?"

3. The case of the Management is that the concerned workmen are contractor's labourers and there is no employee and employer relationship between them and the D.V.C. The job of colony beautification and plantation of B.T.P.S and C.T.P.S. are awarded to the contractors on job contract basis. The concerned workmen are engaged by the contractors on the job for which a schedule of rate is prepared based on requirement and the prevailing minimum wages fixed by the Government of Bihar. Payments are made to the contractors on the basis of quantum of work executed based on schedule of rate. The concerned 65 named

workmen are not borne in the muster-roll of D.V.C. either as temporary or casual workers. They have not been issued any appointment letter to indicate that they are casual or temporary workers of D.V.C. The D.V.C. has banned the employment of casual/temporary workers in its Factory department long back and, therefore, question of regularization of services of the concerned workmen does not arise.

4. On the other hand, the case of the concerned workmen is that they are performing perennial nature of job in the colonies of Bokaro and Chandrapura Thermal Power Stations since 1976 and they are treated as daily rated workers but payment is being made to them on monthly basis. It is stated that the D.V.C. adopted a scheme of regularisation of casual workers in the year, 1977 and accordingly a panel was prepared in 1978. A dispute was raised by the workers for non-empanelment of the forest workers as casual workers and the matter was referred to the Labour Commissioner, Government of Bihar who was pleased to advise the D.V.C.- Management for empanelment of the casual workers of forest department in the Bokaro project for regular employment in the panel finalised in October, 1978. In compliance of the advice of the Labour Commissioner appointments were made from the panel in 1986 but the concerned workmen were not appointed in the regular post like casual workers. Further case of the concerned workmen is that Malis and other regular employees engaged in identical jobs of colony beautification and land shaping in both the power stations perform similar nature of jobs and, therefore, they are entitled to get the same status and scale of pay etc.

5. The Presiding Officer, Labour Court, after considering the facts and circumstances of the case and the evidence adduced by the petitioner-Management and the workmen, came to the conclusion that the concerned workmen by continuously working with the Management for more than a decade, have become entitled for regularization in regular cadre of regular Mazdoor on completion of 240 days of their joining in D.V.C. as daily mazdoors. Consequently the Labour Court directed the Management for absorption of the concerned workmen in regular cadre of mazdoors with retrospective effect and for payment of difference of wages of regular mazdoors. For better appreciation the concluding portion of the award is quoted hereinbelow :

"I have carefully gone through the respective written statements of the parties, the statements of witnesses examined by them and the documents relied upon by them and have thus, come to the conclusion that the concerned workmen by continuously working with the management for more than a decade have become entitled for regularization in regular cadre of regular mazdoors on completion of 240 days of their joining in D.V.C. as daily mazdoor detailed in para 1 of the award. They are also entitled to wages and other benefits which a similarly situated workmen employed on regular basis is entitled. The management is directed to absorb the concerned workmen in regular cadre of mazdoors with retrospective effect indicated hereinbefore and pay them

differences of wages of regular mazdoor within three months from the date of pronouncement of award. This is my award."

6. As noticed hereinabove, the terms of reference referred to the Labour Court for adjudication was only as to whether 81 temporary workmen of the attached, list working in the Thermal Power Stations are entitled for regularisation. Surprisingly the Labour Court, instead of answering the reference, traveled beyond the terms of reference and issued a direction for absorption of the concerned workmen in regular cadre of mazdoors with retrospective effect and also for payment of difference of wages. The impugned award, therefore, prima facie, cannot be sustained in law and the same needs modification in the facts and circumstances of the present case and also in the light of the decision 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.,

7. Admittedly engagement of the concerned workmen as daily rated employees has not been disputed by the petitioner D.V.C. However, most of the workmen either left the job or died and some of them have been continuing in service on daily wages basis. This is evident from the fact that in the writ petition all the 81 workmen were impleaded as party-respondents besides the Union, namely, D.V.C. Staff Association (respondent No. 4). This Court, by order dated 1.8.1995, admitted the writ petition for hearing and directed issuance of notice to all the respondent Nos. 2 to 85 including the concerned workmen. However, respondent No. 4 the Union filed a petition for modification of the order to the extent of issuance of notices to respondent Nos. 5 to 85. It was contended by the Union of the concerned workmen that no notice was necessary to be issued to them. Accordingly, on the prayer of the respondent Union, names of respondent Nos. 5 to 85 were deleted.

8. It is now well settled that a Court or Tribunal cannot issue direction for regularization or absorption in service of daily wages employees merely because of their continuation in service for a long time. The Court or Tribunal at best can direct the Management to consider the cases of the workmen along with similarly situated person for their employment/appointment against the existing or future vacant posts. Recently a Division Bench of this Court considered a similar question in L.P.A. No. 905/2003 filed by the same petitioner, namely, the Management of D.V.C. and modified the award by observing as follows :

"Learned counsel for the respondents (workmen) accepted the legal position that a Court or a Tribunal can at best direct the Management to consider the easels) of eligible daily wages employee(s) along with other similarly situated persons for his/their employment/appointment against the existing or future vacant post(s). In view of such agreement, on the question of law, we modify paragraph No. 28 of the award dated 20th April, 1996, passed in Reference Case No. 7 of 1992, to the extent, mentioned thereunder :

"The eight workmen, namely. A.K. Dey, Jagarnanath Karmakar, Dukhan Singh,

R.A. Tiwary, Sita Moni, Narayan Giri, Aklu Manjhi and Gulam Hansada. are entitle for consideration of their services along with similarly situated persons either against the existing vacancies of Class III posts from the dates, they are so eligible, or against the future vacancies, whichever is later, and they are also entitled for consequential benefits, if found fit for regularization, except the monetary benefits."

9. This writ petition is, therefore, allowed in part and the impugned award is modified by directing the petitioner-Management to consider the cases of the concerned workmen for regularization of their services along with similarly situated persons either against the existing vacancies from the dates they were so eligible or against the future vacancies whichever is later and for payment of consequential benefits, if found fit for regularisation except monetary benefits. The petitioner-Management is, accordingly, directed to implement the award with the modification indicated above within three months from the date of-receipt/production of a copy of this order.