

(2021) 08 GAU CK 0065

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3914 Of 2021

Dilip Das And 13 Ors

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 226
Specific Relief Act, 1963 — Section 14(d)

Citation : (2021) 08 GAU CK 0065

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M Chanda

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Dutta, learned counsel for the petitioners. Also heard Mr. A.K. Dutta along with Mr. S.S. Roy, learned CGC appearing for

respondent nos. 1 to 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have made the following prayers:

1. In the premises aforesaid, it is therefore respectfully prayed that Your Lordships would be pleased to admit this petition, call for the

records of the case and issue notice to the respondents to show cause as to why a writ of Mandamus shall not be issued directing the

respondents (i) to pay the petitioners the minimum of the time scale of pay given to regular Conservancy Safaiwala at least from the date of

their engagement with arrear monetary benefit or alternatively to pay them at the minimum revised rate of daily wages from the date of their

initial engagement i.e. from the month of January, 2017 till the date of oral

termination (ii) Not to disengage the petitioners from the service

of Conservancy Safaiwala till the posts of Conservancy Safaiwala are filled up on regular basis and (iii) to consider the case of the

petitioners for regular absorption, as and when vacancies are sanctioned by the Government of India, Ministry of Defence for Station HQ

Tamulpur under the administrative control of respondent no. 4.

2. Cause or causes being shown and upon hearing the parties be pleased to make the Rule absolute and/ or pass such other further order to orders as

to your Lordships may deem fit any proper.

3. Pending disposal of the instant application, Your Lordships may be further pleased to pass an order in the nature of a mandatory injunction directing

the respondents to engage/ re-engage the petitioners in service as Conservancy Safaiwala under the respondents.

3. The learned counsel for the petitioners has submitted that the petitioners were engaged as contractual conservancy safaiwala in the month of

January, 2016. However, as wages less than the rates notified by the competent Govt. of India authority under the Minimum Wages Act, 1948 was

being paid, the petitioners had protested against the lesser lump-sum wages provided to them. It is submitted that as a retaliatory measure, the

petitioner no.2 was disengaged on 06.12.2017 and the rest of the petitioners were disengaged on 01.05.2018. Thereafter, the aggrieved petitioners had

challenged their disengagement before the learned Central Administrative Tribunal, Guwahati Bench, Guwahati. However, the said learned Tribunal

by order dated 08.08.2018 passed in Original Application No. 040/00291/2017, had dismissed the original application as not maintainable before the

said Tribunal and the said Original Application was dismissed on the want of jurisdiction. Consequently, on the dismissal of the original application,

other misc. applications were also dismissed.

4. Aggrieved by the said order dated 08.08.2018, the petitioners had assailed the said order before this Court by filing WP(C) 3896/2019. The Division

Bench of this Court by order dated 23.02.2021, in agreement between with the view taken by the learned CAT as to its lack of jurisdiction, while

dismissing their writ petitions, had observed that the petitioners cannot be without a remedy and accordingly, it was provided that the petitioners would

always be at liberty to approach this Court by filing an appropriate writ petition

and the dismissal of the original application, which was on the ground of jurisdiction by the learned Tribunal and the writ petition by this Court, will not prejudice their case before this Court or before any other courts

where the matter is taken up subject to its jurisdiction and with the aforesaid observation, the writ petition was dismissed.

5. The learned counsel for the petitioners has submitted that the Division Bench of this Court had permitted the petitioners to approach this Court in

appropriate writ petition. It is also submitted that the respondents had projected before the learned Tribunal that the petitioners were wrongly shown to

be engaged not directly by the respondent nos. 1 to 5, but by a private contractor, who is arrayed in this writ petition as respondent no.7. It is also

submitted that the respondents had relied on a contract agreement for outsourcing 43 conservancy safaiwalas for the period of 01.04.2017 to

31.03.2018, being an agreement dated 28.03.2017 (Annexure-8). It is submitted that the quantum of wages paid to the petitioners falls short of the

prescribed minimum wages per day and to demonstrate the minimum rates of wages prescribed by the office of the Chief Labour Commissioner (C),

New Delhi under Ministry of Labour and Employment, Govt. of India, the learned counsel for the petitioner has referred to Annexure-4 of the writ

petition which is an order dated 17.03.2017 by which the revision of the minimum rates of wages was made. It is submitted that the documents

annexed as Annexure-6 series reflects that the petitioners were paid a lump sum amount of Rs.5,000/- per month as their wages which is stated to be

short of the minimum wages prescribed. It is submitted that the respondent nos. 1 to 5 being instrumentalities of the State could not have agreed to pay

wages lesser than the minimum wages prescribed, and that the respondents cannot be permitted to shirk their responsibility of paying the minimum

prescribed wages to the petitioners.

6. It is also submitted that the petitioners dispute the agreement dated 28.03.2017 and claim that the said agreement is a sham agreement by the

respondent nos. 1 to 5 with respondent no. 7 and it is merely a ploy not to pay the minimum wages to the petitioners.

7. Accordingly, it is submitted that not only the disengagement of the service of the petitioners was blatantly illegal, but as the petitioners were

deprived by the State of their lawful wages, this writ petition was maintainable

on facts and in law.

8. The learned CGC has submitted that there is a prescribed authority for entertaining the dispute for minimum wages. It is also submitted there is

nothing on record to show that the engagement of the petitioners was directly made by any of the respondent nos. 1 to 5.

9. Considered the materials available in the writ petition.

10. The stand of the petitioners is that the agreement dated 28.03.2017 between the Station Commander and respondent no. 7 was a sham agreement.

In this regard, it is seen that the petitioners have not sought for any declaration that the said agreement is a sham agreement.

11. Moreover, the said agreement has spent its force as it was for the period of 01.04.2017 to 31.03.2018. The writ petition does not contain any

document to show that the petitioners were directly engaged by any of the respondent nos. 1 to 5. Therefore, the presumption is that the petitioners

had taken advantage of the purported agreement dated 28.03.2017 to get engagement to work as contractual conservancy safaiwala. It is also seen

that in absence of any document in the writ petition to show engagement of the petitioners was directly by respondent nos. 1 to 5, the only presumption

that can be drawn from the said agreement dated 28.03.2017 is that the engagement and disengagement of the petitioners can only be through the

respondent no.7, who is not a State within the meaning of Article 12 of the Constitution of India. Therefore, direction in the nature of writ of

mandamus cannot be issued on the proprietor of the respondent no.7 proprietorship concern for grant of any of the reliefs as prayed for in the writ petition.

12. Moreover, in the absence of any documents on record to show that the petitioners had been permanently engaged, the nature of engagement of

the petitioners appears to be contractual and that the Court under Article 226 of the Constitution of India would not have any power to extend the

contractual period of engagement so as to create any subsisting and binding contract between the petitioners and the employer.

13. It is also seen that a contract for personal service cannot be specifically enforced and the prohibition to that effect is engrained in Section 14(d) of

the Specific Relief Act.

14. Moreover, even assuming that the respondents are paying to the respondent

no.7 wages for engaged workers at a lesser rate than the minimum wages prescribed, the Forum competent to adjudicate dispute under Minimum Wages Act, 1948 would not be powerless to exercise its power against the respondent no.7 to pay minimum wages, if found due.

15. Therefore, the Court is disinclined to invoke the powers under Article 226 of the Constitution of India in the present case in view of the discussion above.

16. The Court is inclined to provide that the dismissal of the writ petition would not stand in the way of the petitioner to avail appropriate remedy as may be available under the law. Any observation made herein shall not cause any prejudice to the petitioners.

17. Accordingly, this writ petition stands dismissed at the motion stage without issuing notice on the respondents.