

(2011) 08 JH CK 0109
In the Jharkhand High Court
Case No : L.P.A. No. 697 of 2003

Employer in relation to the Management of Central Mine
Planning and Design Instituted Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H
Mines Act, 1952 — Section 48

Citation : (2011) 08 JH CK 0109

Hon'ble Judges : Prakesh Tatia, C.J;H.C. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned Counsel for the parties.

2. The Union of India as well as the workmen both are aggrieved against the order passed by the learned Single Judge dated 7th July, 2003 in C.W.J.C. No. 2406 of 1997(R), whereby the learned Single Judge upheld the award dated 1st May,1997 passed in Reference Case No. 51 of 1993, wherein it has been held that action of the employer in terminating the services of Naresh Jha and 27 others with effect from 1st July,1992 is not justified and the workmen are entitled to be reinstated and regularized from that date together with 40% of back wages and other benefits. The learned Single Judge after considering the arguments of the parties held that there is No. illegality in the award passed by the Labour court in paragraph-25 of the impugned order. However, thereafter it has been observed that the workmen were entitled to reinstatement but in view of the judgment of the Hon'ble Supreme Court delivered in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, , the award needs to be modified and the learned Single Judge modified the award by giving liberty to the employer to reinstate and thereafter if there is No. need of these workmen in other project then they may by following the provisions of law retrench the

services of the above 28 employees.

3. The employer is aggrieved because of the award passed to reinstate the employees, may be in the same Project or in any other Project, on the ground that the workmen were engaged in a Project of UNDP and their services came to an end in terms of the condition contained in the contract of employment itself and, therefore, the termination of services of the workmen were not a retrenchment, in view of Section 2(oo)(bb) of the Industrial Disputes Act, 1947.

Whereas the workmen contention is that once the learned Single Judge has upheld the award, it could not have allowed or should not have observed to allow for retrenchment or termination of the services of the workmen upon finding that there is No. need of the workmen in any other project of the employer. According to the learned Counsel for the workmen, when termination was found illegal by the Labour court then natural consequences should have followed and the award could not have been modified under presumption that there will be No. work left for these workmen or for any other reason. On the other hand, learned Counsel for the employer contention is that the documents placed on record clearly show that it was an appointment given in Project and, therefore, the Tribunal as well as the learned Single Judge wrongly held that it was a case of violation of Section 25-F or it is a case of Section 25-G and 25-H.

4. We have considered the submissions of the learned Counsel for the parties and perused the entire record. As per the Annexure-3 dated 5th November, 1988, it is apparent that the workmen were offered job in a UNDP project on casual engagement on daily rated basis as un-skilled/skilled job only and it was made very clear that the appointment shall be purely temporary and it will not carry any claim or right in future for any regular appointment in the Company. Not only this, it was also made clear that the employee shall have to report for duty to the Officer-in-charge, UNDP Project on Modeling and Control of Water system in Coal Mining environment, Lalamatia. This fact is not in dispute that the employment was under a Project of the UNDP and 100% funded by UNDP and in the said Annexure, in column No. 6 it is clearly mentioned that the nature of appointment shall be temporary under UNDP project. The management well before end of project took decision to discontinue the services of workmen engaged in the project which is evident from Annexure-4. The Annexure-4, which is a confidential minutes of the employer, says as under:

The UNDP Project is terminating on 30.6.92. Therefore, the services of all those who engaged and listed below against this project are to be discontinued with effect from 30.6.92(A.N.):

In this Annexure-4, there is a name of 28 workmen who are before us as workmen. This document clearly indicates that a decision was taken by the employer to discontinue the services of the workmen engaged under the offer given by Annexure-3 referred above. It is also admitted case that after 30th June, 1992 i.e., from 1st July, 1992 the workmen were not allowed to do the job

on the basis of which they were given appointment under the said Project. Therefore, the employer acted only in accordance with the terms of contract of appointment, that too, which was under the project totally funded by the UNDP.

5. Section-2(oo)(bb) clearly provides an exception of retrenchment, when termination of service of the workman is as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein. Meaning thereby if under a contract the workman agrees to accept the employment on contract basis with condition of the end of the employment with the expiry of the terms mentioned in the contract or the contract containing a condition of termination of the employment then that is not a retrenchment. The said issue was under consideration in *Municipal Council, Samrala v. Raj Kumar*, reported in (2006) 3 S.C.C. 81, wherein the Hon''ble Supreme Court held that the first part of Section 2(oo)(bb) contemplates termination of service on non-renewal of contract of employment or on its expiry and second part of Section 2(oo)(bb) postulates termination of such contract of employment in terms of stipulation contained in that behalf and it has been held that Section 2(oo)(bb) is exception to the class of retrenchment as defined in the Industrial Disputes Act, 1947. In the case of *Municipal Council, Samrala v. Raj Kumar*, the judgment of S.M.Nilajkar, which was considered by the learned Single Judge, was also considered and it has been held by the Hon''ble Supreme Court in the case of *Municipal Council, Samrala v. Raj Kumar* that decision rendered in S.M.Nilajkar''s case is not an authority for the proposition that apart from a project or a scheme of temporary duration, Section 2(oo)(bb) of the Industrial Disputes Act will have No. application. In the facts of the case, it was held that the offer of the appointment clearly containing a term that the contract was a short-lived one and would be liable to termination as and when the employer thought it fit and proper or necessary to do so, which term the Respondent-workman had understood, and affirmed by affidavit, the case clearly fell under second part of Section 2(oo)(bb) and, therefore, the Hon''ble Supreme Court set aside the award passed by the Labour court.

6. Here, in this case, it appears that the Labour court as well as the learned Single Judge proceeded on some assumption and decided the matter on the basis of some conjectures, which have No. relevance at all, in view of the fact that the learned Single Judge considered the Standing Order of employment framed by the employer, which covers the service conditions of those employees who have been employed by the employer directly and not under any Project and by doing so the learned Single Judge has proceeded to consider the effect of Section 48 of the Mines Act and the provisions of maintenance of Registers under the said provision and also considered Clause 3.1,3.4 and 3.5 of the Standing Order and more particularly Clause 3.5 wherein it has been stated that a "permanent workman" is one who is employed on a job of permanent nature for a period of at least 6(six) months or who has satisfactorily put in 6(six) months continuous service in a permanent post as a probationer. It appears that the said

clauses have been applied as though the workmen, who have been given appointment under a Project, were the direct employee of the employer, ignoring the fact that what is the nature of the appointment of those workmen. The condition contained in the offer letter given by the employer to the workmen clearly indicate that the workmen were offered the appointment under a project and not under the employment of the employer itself. It is relevant to mention here that the Project was 100% funded by the UNDP. In that situation, if the witness of the workmen, evidence of which has been referred by the learned Counsel for the workmen, indicate that the work under the Project remained incomplete, that itself cannot be a reason to believe that the project continued beyond the terms of the contract of project entered into between the employer and the UNDP. Under a project, by virtue of the expiry of period of the contract, the work may not be completed. Under the project, with the expiry of the period of project or with the exhaustion of the fund, if a work is not completed and the employer undertake to complete that work from its own resources and employees, that does not make the continuation of the project itself but that is an independent and separate work of the employer. The Project which has come to an end cannot be presumed to be continued because some or even major work is left out in the Project after the end of term of project and it appears that this distinction has not been noticed by the Labour court as well as by the learned Single Judge and, therefore, they proceeded to observe that since the work was not completed under the Project, therefore, the Project continued beyond the period of agreement under which the employer was getting 100% financing from UNDP.

7. Furthermore, the Labour court as well as the learned Single Bench failed to draw distinction between the two Projects, one which was under consideration before us and another was with respect to the Project at Meeranagar Camp. Learned Counsel for the workmen also frankly and fairly admitted that, that work was not under UNDP but that was under the Project of Science and Technology Department of the Government of India. In that view of the matter, the employee of the two Projects could not have been amalgamated for any purpose and end of the contract of one Project cannot have effect on continuation of other Project or even absorption of other employees in other Project, if the employer decided to absorb employees of other Project. There is No. similarity in these two Projects.

8. Learned Counsel for the workmen asserts that learned Single Judge has upheld the finding of fact with respect to the continuation of the Project, which, as we have discussed above, appears to be not based on any evidence and oral evidence of employer's witnesses have been mis-read as well as in light of documentary evidence Annexure-4, the oral evidence of any witness has No. value. In that situation, even if the employee of other project were continuing even then Section 25-G cannot be applied because Section 25-G of the Industrial Disputes Act can be applied to the class of workmen, who are in one class and, therefore, in a case where out of 28 employees, a few would have been removed

then Section 25-G could have been invoked, so as to say that "last come should go first". In this case, all the 28 persons who were offered employment under the Project, their services have been terminated with effect from 1st July, 1992.

9. In view of the above reasons, the impugned order dated 7th July, 2003 passed by the learned Single Judge and the award dated 1st May, 1993 deserves to be set aside, hence both are set aside.

Since the award itself has been set aside, therefore, the LPA preferred by the workmen is liable to be dismissed as the said LPA has been preferred for getting more relief than granted by the learned Single Judge; whereas the very root for grant of relief to the workmen has been denied by this Court. Therefore, the appeal (LPA No. 853 of 2003) preferred by the workmen is dismissed and the appeal (L.P.A. No. 697 of 2003) preferred by the employer is allowed.