

(2010) 12 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (L) No. 495 of 2007

Employers in relation to the Management of Kathara Colliery of C.C.L. APPELLANT

Vs

Their Workmen represented by the Area Secretary, Bihar Colliery Kamgar Union RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 1 JCR 225

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for Petitioner Management of Kathara Colliery of M/S Central Coalfields Limited, Bokaro and learned Counsel for the workmen.

2. The Petitioner, management of Kathara Colliery of M/S C.C.L. is challenging the award passed by the Presiding Officer, Central Government, Industrial Tribunal No. 1, Dhanbad in reference case No. 65 of 1992 dated 28.2.2006 as contained in annexure-3 by which judgment learned Tribunal found answer to the reference that the action of the management of Kathara colliery of M/S CCL in not regularizing and making the payment of wages as per NCWA to these workmen is not justified and they are entitled for regularization as general mazdoor category-1 and payment of wages as per NCWA. Learned Tribunal also directed the management for regularizing the concerned workmen within 30 days after passing of the award.

3. It is submitted by learned Counsel for Petitioner-management that the so called 11 workmen have failed to prove by any evidence that the 11 workmen worked at Kathara Colliery of M/S CCL from 1986. In their evidence the workman who was examined as WW1 clearly admitted in his cross-examination that they

have got no appointment letters, no payment" certificate, no document to prove that they worked at Katara Colliery under CCL. The order of regularization is based on document Ext. W-2, a certificate granted in plain paper and signed by a person stating that he is Personal Manager and 11 persons worked as Sweeper in the Katara Colliery. Even that certificate does not show that the aforesaid 11 workers worked for 240 days at the Colliery and they were employee of CCL and as such the finding of the Tribunal is based on no evidence. There is absolutely lack of appreciation of evidence and hence, the impugned award is fit to be set aside.

4. learned Counsel for Petitioner submitted that it has been settled by various judgments of Hon"ble Supreme Court including the one reported in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., that "unless the appointment are made by following the rules, such appointment does not have any right to claim the permanent absorption. It was held at para-15 of the judgment that no direction can be given that daily wages employee should be paid salary of regular employee". Moreover, in the instant case the workmen even failed to prove that they were temporary employee of Kathara Colliery even for sometime. The finding that they worked for 240 days and hence entitled for regularization is absolutely bad and fit to be set aside. He has also relied upon the judgment reported in Gangadhar Pillai Vs. Siemens Ltd., In the case of Gangadhar Pillai where it has been settled that it is not the law that on completion of 240 days of continuous service in a year, the employee concerned is entitled to be regularized to service and or permanent status. In the instant case the workmen failed to prove that they worked for 240 days or they were even employee of CCL. In that view of the matter, award is fit to be set aside.

5. On the other hand learned Counsel for the Respondent-workmen has submitted that no plea of 240 days was taken by the management in the written statement filed before the Tribunal. It only claimed that they are not employees of Kathara Colliery under CCL. The management have even failed to prove that they were employed by any contractor to work under the Kathara Colliery of CCL. It is submitted by learned Counsel for Respondent that vide ext. W-2 the document relied by the workmen, it has been proved that they were the employee of CCL and as such they have rightly been directed to be regularize in permanent service since, they were working as Sweeper which is perennial nature of work. learned Counsel for Respondent has relied upon the judgment reported in Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, wherein it has been held by the Hon"ble Supreme Court that the finding of fact cannot be disturbed under the writ jurisdiction of the Court. Respondent has further relied upon the judgment reported in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, in the case of Hussain Bhai where in it has been held that where the workmen has been employed even by a contractor but the real employer is management and not the intermediate contractor. learned Counsel for Respondent has also relied upon the judgment

reported in 2008(1) JLJR 121 wherein it has been held that finding of fact arrived at by the Tribunal cannot be disturbed.

6. After hearing both the parties and going through the record, evidences and judgments relied upon by both parties, I find that a reference was made by the Central Government Industrial Tribunal No. 1 which is as under:

Whether the action of the management of Kathara Colliery of M/S CCL, in not regularizing and making the payment of wages as per NCWA to these workmen is justified

7. The case of the sponsoring union on behalf of workmen was Sharwan Ghashi and 10 others whose names find place in the annexure are working as Sweeper at Kathara Colliery since, 1986 and in each calender year they have put in attendance of 240 days. According to the sponsoring union the works of sweeping and cleaning are prohibited category of job and are of permanent and perennial nature. The management in order to deprive the service of concerned person prescribed under NCW are making payment of wages through intermediary i.e. some contractor. Therefore, the sponsoring union prays for regularization of 11 persons payment of wages as per the NCWA.

8. On the other hand learned Counsel of the management submits that reference was bad since, there is no dispute u/s 2 of the Industrial Dispute Act since, according to the management the Central Government is not appropriate Government. They further submitted that though 11 workers are paid employee of Kathara Colliery, but they never worked under them. According to the management occasionally there is requirement of cleaning of drainage in residential colony of Kathara Colliery, then the management engages contractor from time to time, but such work was temporary in nature for brief period and as such the concerned workmen are not entitled for regularization.

9. On the basis of the aforesaid plea of the parties. Tribunal framed issue as to whether there is relationship of employer and employee between the management of Kathara Colliery and concerned workmen and decided the issue against the management and directed for regularization of the workmen.

10. It appears from the evidences adduced by the union of the workmen that the case of the union on behalf of the workmen are based on the evidence of WW1 Anju Ghashi and Union representative, WW2, Kesho Singh Yadav as also the document Ext. W. 2 a certificate issued by some Personal Manager of Kathara Colliery.

11. WW1 Anju Ghashi stated in his evidence that he is one of the workmen and he has deposed on behalf of other 10 workmen. He has stated that he worked at Kathara Colliery as Sweeper from 1986. They are still working there from 1986 regularly as Sweeper. The work is of permanent nature. They have worked for 240 days in calender year and are working under the supervision of Sanitary Inspector of the management. They are being paid by the office of the

management. But in cross-examination he admitted that management of Kathara Colliery had not given them any appointment letter. Their name were not sponsored by the Employment Exchange to the management. They have not been provided any Identity Card or pay slip. They have been appointed by the Sanitary Inspector to work there. The second witness WW2. Kesho Singh submitted that he is the Area Secretary of the Colliery Kamgar Union and the concerned workers are from the union. He has stated that concerned workmen are working since 1986 as Sweeper and they have raised the industrial dispute.

12. From the evidences of these two witnesses, it is very dear and it was admitted by WW1 that he was appointed by the Sanitary Inspector, but no such appointment letter was produced that they were appointed by the Sanitary Inspector of Kathara Colliery. It is also apparent that there is no document e.g. appointment letter from CCL Kathara Colliery, pay slip or Identity Card etc. issued to me workmen and in absence of any such proof only because they orally stated that they are working since. 1986, it cannot be accepted that they are working as Sweeper in the Kathara Colliery of CCL. Learned Tribunal has given a finding at para 6 basing his judgment on Ext. W2 that Anju Ghanshi and other workmen have worked as Sweeper in the Kathara Colliery from 1986 till date and they are putting attendance for more than 240 days in a calender year and hence they are entitled for regularization. but a plain reading of Ext. W2 it will appear that even W2 does not stated that 11 workers worked for 240 days in any year or that they are working as Sweeper at Kathara Colliery, since 1986. The aforesaid certificate granted by some Personal Manager is as under:

This is to certify that is Sri Sarvan Ghanshi, Sanju Ghanshi, Anju Ghanshi, Rajiv Ghanshi, Ajit Ghanshi, Narayan Ghanshi, Ajay Ghanshi, Nirmal Ghanshi, Ramnand Ghanshi, Kamles Ghanshi, Lalkishore Ghanshi, all are working as Sweeper"s in different Sections of Kathara Colliery under the supervision of M/S CCL till today.

13. The aforesaid plain paper certificate has got no seal of CCL which does not prove that the aforesaid 11 sweeper were working at Kathara Colliery since, 1986 or they have put up 240 days of working in any calender year.

14. The Tribunal in absence of any proof of work in Kathara Colliery relied on the statement of only management witness, MWI Md. Noorullah, who Stated that about 50 regular sweepers are working to clean the township of Kathara Colliery and also proved that some time in order to clean garbage, management engages contractor and prove tender notice Ext. M1, work order Ext. M2 and stated that the workmen who claim to have worked under Kathara Colliery never worked, but since he accepted in cross- examination that the job of cleaning and sweeping is of permanent nature and his job is not to supervise the work of Sweeper, hence Tribunal drew adverse inference that management failed to produce documents countering the claim of the 11 workmen and hence, gave a finding that the aforesaid workmen worked for 240 days.

15. Perused the order-sheet of the Tribunal at the instance of Respondent's counsel, who stated that some documents were called for by the order dated 28.4.1995. It appears at page 6 order No. 18 that "Sri Mukherjee for the workmen files certain photo copy of documents along with list of copy of which was served upon the Sri Mevetley for the management and Sri Mukherjee also filed a petition calling the document in original from the management Prayer is allowed". Except that order there is no order calling for any document. Even if, it is accepted that workmen filed certain document along with the list of the original were not provided by the management then the workmen should have proved those documents being the secondary evidence, but no such documents are either available on record nor they have proved anything except the document Ext. W1, there is no document proved by the workmen. Although a decision has been relied by the counsel for the Respondent that it is settled principle that finding of fact arrived at cannot be disturbed under the writ jurisdiction of the Court, but in a decision also held by the Hon'ble Supreme Court it appears that the finding based on no evidence cannot be sustained. As has been relied by learned Counsel for Petitioner in the case reported in Gangadhar Pillai Vs. Siemens Ltd., in which it has been held at para 24 of the judgment that "only because employee has been engaged as casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee". It was also held in para 28 that "it is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularization of service and/or permanent status".

16. As discussed above, since the workmen has failed to prove that they worked as Sweeper at Kathara Colliery by any evidence and that they ever worked for 240 days in a year and it is a case of absolutely no evidence, hence the finding arrived at by the Tribunal is set aside. The impugned award as contained in annexure-3 is quashed and the writ application is allowed.