

(2003) 07 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 47303 of 1999

General Manager, Panki Thermal Power Station and Another	APPELLANT
Vs	
Labour Commissioner and Another	RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Uttar Pradesh Contract Labour (Regulation and Abolition) Rules, 1975 — Rule 25(2)

Citation : (2003) 6 AWC 5344 : (2003) 3 LLJ 1048 : (2003) 2 UPLBEC 1665

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; B.N. Singh and A.S. Divekar, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of this writ petition under Article 226 of the Constitution of India, petitioner-employer has challenged the award passed by the Industrial Tribunal (III), U.P., Kanpur in Adjudication Case No. 64 of 1989 and Misc. Case No. 10/89 [6-F] dated July 30, 1999.

2. The case set up by the employer is that they employed 118 workmen referred to in the schedule as contract labourer through the contractor, Vasudev and Company Limited. The respondent Union filed an application, before the Labour Commissioner, Kanpur under Rule 25(2)(v)(a) of U.P. Contract Labour (Regulation and Abolition) Rules, 1975 with the claim that they are performing the same and similar job as are being performed by other regularly appointed workmen, therefore, they are also entitled to the same wages as are being paid to the regular employees whereas in fact, they are getting Rs. 61.50/- per day as those regular workmen are getting Rs. 118.40/-per day. The Labour Commissioner before whom the aforesaid application was filed after issuing notices to the respective parties have arrived at the conclusion that since these workmen referred to in the schedule though employed through Contractor are entitled to payment of same wages as those who are directly recruited by the

petitioner-employer. It is this order along with the award is under challenge here in this writ petition. Now coming to the challenge of the award the following dispute was referred:

(Vernacular matter omitted)

3. After the notices were issued to the parties, parties exchanged their pleadings. So far as the pleadings are concerned there is no dispute that the workmen relied upon several decisions of the Apex Court reported in 1999 (81) FLR 1016 and also a decision reported in B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, wherein the Supreme Court has held as under at p. 432 of LLJ:

"6. Thus we see that no invidious distinction can be made against contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central). It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered u/s 10 of the Act. Similarly the question whether the work done by Contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25(2)(v)(a). In these circumstances, we have no option but to dismiss both the writ petitions but with a direction to the Central Government to consider whether the employment of contract labour should not be prohibited u/s 10 of the Act in any process, operation or other work of BHEL, Hardwar. There will also be a direction to the Chief Labour Commissioner to enquire into the question whether the work done by the workmen employed by the contractors is the same type of work as that done by the workmen directly employed by the principal employer in BHEL, Hardwar."

4. Thus, so far as the order passed by the Labour Commissioner under Rule 25(2)(v)(a) is concerned does not warrant any interference and challenge to the same is devoid of merit. So far as the reference is concerned the Labour Court categorically recorded findings that the labour employed through contractor are always employed for a fixed period and are continuously working for more than 240 days in the previous calendar year.

5. In this view of the matter, even though they are registered under the provisions of U. P. Contract Labour (Regulation and Abolition) Act, 1970 they are definitely working directly under the employer and it is proved beyond doubt on the evidence on record that everyone of them has worked more than 240 days in previous calendar year.

6. In view of the aforesaid findings which though tried to be assailed by learned counsel for the petitioner unsuccessfully, this Court cannot come to the conclusion that the view taken by the Labour Court in answering the reference in favour of the workmen suffer from any error of law. This writ petition thus has no force and is accordingly dismissed.