

**(2007) 04 AHC CK 0156**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 47303 of 1999 with Civil  
Miscellaneous Writ Petition No. 13679 of 2000

General Manager, Panki Thermal Power Station and another,  
Viduit Mazdoor Sangathan

**APPELLANT**

**Vs**

Labour Commissioner, U.P., Kanpur and another, U.P. State  
Electricity Board and others

**RESPONDENT**

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**Date of Decision :** 09-04-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

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

**Citation :** (2007) 04 AHC CK 0156

**Hon'ble Judges :** Anjani Kumar, J

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**Judgement**

Anjani Kumar, J.

1. Writ Petition No. 47303 of 1999 has been filed by the employers against the order dated 6.8.1999 of the Labour Commissioner under Rule 25(2) (v) (a) of U.P. Contract Labour (Regulation and Abolition) Rules, 1975 and the Writ Petition No. 13679 of 2000 has been filed by the workmen challenging the award dated 30.7.1999. The Writ Petition No. 47303 of 1999 came up for hearing before this Court which had been decided by this Court; on 11th July, 2003. The employer challenged the judgment of this Court dated 11th July, 2003 by means of Civil Appeal No. 1734 of 2004 before the Hon"ble Supreme Court. The Hon"ble Supreme Court by its judgment and order dated 14th September, 2005 has set aside the order of this Court and issued the following direction:

"Heard learned Counsel for the parties.

We find that two Writ Petitions were filed; one by the present appellant and the other by the present respondent. Writ Petitions filed by the appellant was numbered as Civil Misc. Writ Petition No. 47303/1999 and the respondent's Writ Petition was numbered as Civil Misc. Writ Petition No. 13679/2000. The Writ petition filed by the present appellant challenged the order of the Labour

Commissioner while in the respondent's Writ Petition challenge was to the legality of the award made by the Industrial Tribunal dated 30.7.1999. The basic issue involved in both the Writ Petitions is the status of the workmen concerned, i.e., whether they were contract labourers or whether they were employees of the appellant Corporation. The Writ Petition filed by the appellant has been dismissed while the Writ Petition filed by the respondent is still pending adjudication. The issues are interlinked and, therefore, it would have been appropriate for the High Court to take up both the Writ Petitions together for disposal. In this background, we set aside the order of the High Court and remit the Writ Petition to the High Court for consideration along with the other Writ Petition noted above.

We make it clear that we have not expressed any opinion on the merit of the respective stand. Since the Writ Petitions are of the year 1999/2000, we request the High Court to dispose of the Writ Petitions as early as practicable preferably within six months from the communication of this Order. The appeal is accordingly disposed of. No order as to costs."

2. In view of the aforesaid direction both these writ petitions are up for hearing before this Court.

3. The brief facts of the case are as under :

The case set up by the employer is that they employed 118 workmen 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 duties 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 and 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 though employed through Contractor are entitled to payment of same wages as are being paid to those who are directly recruited by the petitioner employer. It is this order which is under challenge in Writ Petition No. 47303 of 1999.

4. The workmen have submitted before the Labour Commissioner that 118 workmen have been working in the Coal handling Plant of respondent No. 2 performing duties of the helper etc., but they have been engaged by the Contractor and they were performing regular duties since before the reference is made.

5. The workmen represented by the petitioner's Union filed a case for the Regional Conciliation Officer which is numbered as 664 of 1988 for regularization of services of 118 workmen concerned who were working in the Coal Handling Plant of the respondent employers. The Conciliation Officer referred the matter to

the State Government with the report that no conciliation is possible. Ultimately the State Government by its referring order dated 5.5.1989 referred the matter of dispute for adjudication to the Industrial Tribunal, Kanpur (hereinafter referred to as the Tribunal) which registered the reference as Adjudication Case No. 64 of 1989. The following dispute is referred to the Tribunal:

"KYA SEVAYOJAK NO. 1 DWARA SANLAGNA PARISHISHT MEIN ULLIKHIT 118 SHRAMIKON KO NIYAMIT (REGULAR) NA KIYA JANA UCHTT TATHA/ATHAWA VAIDHANIK HAI? YADI NAHIN, TO SAMBANDHTT SHRAMIK KYA HITLABH/UPSHAM PANE KE AKHIKARI HAIN, KIS TITHISE TATHA KIS ANYA VIVRAN SAHIT ?"

6. Notices issued by the Labour Commissioner were responded by the employers as well as the workmen and they exchanged the pleadings and the matter has been decided by the Labour Commissioner by the impugned award dated 6th August, 1999.

7. The employers as well as workmen exchanged the pleadings before the Tribunal and examined the witnesses who appeared on behalf of respective parties. During the pendency of the adjudication case before the Industrial Tribunal a tripartite agreement was arrived at amongst the petitioner's Union, the employer No. 2 and the State Government wherein it is agreed by the respondent employer that the muster roll employees and contract labourers working in the Board will be regularized by the Board and a copy of the agreement has been filed before the Tribunal. Pursuant to the aforesaid tripartite agreement the Board has regularized certain workmen excluding the workmen represented by the Union in the present petition and wages of regular workmen. The present workmen represented by the Union aggrieved by action of the employer that though they were performing the same and similar nature of duties as were being performed by those workmen who have been regularized and other regular workmen. The workmen, therefore, filed application under Rule 25(2)(v)(a) of U.P. Contract Labours (Regulation and Abolition) Rules, 1975 before the Labour Commissioner, Kanpur. The Labour Commissioner vide its order dated 6th August, 1999, impugned in the Writ Petition No. 47303 of 1999 directed the employers to pay same salary and allowances to the concerned workmen on whose behalf the application under Rule 25(2) (v) (a) was filed before the Labour Commissioner.

8. Subsequent to filing of the writ petition by the employer challenging the order dated 6th August, 1999 which was pending before this Court, the adjudication case No. 64 of 1989 has been decided by the Tribunal. The Tribunal held that the prayer made by the workmen concerned for regularization of their services cannot be granted and reference was answered against the workmen concerned. By award dated 30th July, 1999. It is this award in adjudication case/No. 64 of 1989 dated 30th July, 1999 which is challenged by means of the Writ Petition No. 13679 of 2000 by the workmen through their Union.

9. In view of the order passed by Hon"ble Supreme Court dated 14.9.2005 both the writ petitions are heard together and decided by this judgment.

10. The argument advanced on behalf of the petitioner, namely, the workmen in Writ Petition No. 13679 of 2000 whereby the award has been challenged is that the case set up by the employer that the workmen were employed through registered Contractor after following the procedure provided under the provisions of U.P. Contract Labour (Regulation and Abolition) Rules, 1975 has ultimately been supported by evidence on record and the workmen have not been able to demonstrate that they are employed directly by the employer. In these circumstances the answer given by the Tribunal to the reference made to it that there is no illegality in nonregularization of these 118 employees, and, therefore, the workmen concerned are not entitled for any relief as neither it has been demonstrated by the petitionerworkmen to be either perverse or in any way suffer from any error in law much less an error apparent on the face of record which may warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The Tribunal in its award, after considering the evidence on record and other materials, has arrived at a conclusion that these workmen were employed through Contractors and these Contractors are registered Contractors under the provisions of U.P. Contract Labour (Regulation and Abolition) Rules, 1975 and that these workmen were not employed by the employer directly. The Tribunal has also recorded a finding that it is true that these Contractors are given contract to supply labour for a particular period and for a particular assignment. The moment the assignment is over the contract comes to an end automatically. It has no concern with the Principal employer, namely, respondents No. 1 and 2. Nothing has been brought to the notice of the Court on behalf of the petitionerworkmen to the effect that concerned workmen were employed through Contractors in 1975 and suffers from any error much less an error which may warrant interference under Article 226 of the Constitution of India. Thus I find that the award of the Tribunal dated 30th July, 1999 do not require any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The Writ Petition No. 13679 of 2000 deserves to be dismissed and is hereby dismissed.

11. In the award the Tribunal has answered the reference made to it in the following terms :

"On the basis of the pleadings of the parties arid evidence on record my conclusion to the reference is that the action of the employer No. 1 in not regularizing the services of 118 employees mentioned in the reference is justified and valid and mat the workmen concerned are not entitled for any relief."

12. Thus there are two orders, one passed by the Labour Commissioner dated 6th August, 1999 impugned in the Writ Petition No. 47303 of 1999 and the other award dated 30th July, 1999 passed by the Industrial Tribunal. The order dated 6th August, 1999 is subject to challenge by the employer in the Writ Petition No. 47303 of 1999 whereas the award has been challenged by the Union of workmen

by means of Writ Petition No. 13679 of 2000. The Labour Commissioner by its order dated 6th August, 1999 impugned in the Writ Petition No. 47303 of 1999 has held on the basis of the pleadings and material on the record and in view of the decisions placed by the respective parties before the Labour Commissioner it is apparent that these contract workmen are working for the past several years in the establishment of the employer, therefore, the refusal to pay similar pay by the employer as being paid to the regular employees has no legal justification. The Labour Commissioner, therefore, directed that these 118 workmen should be paid similar wages as being paid to unskilled regularly employed workmen by the employer along with D.A. and other allowances on the principle of equal pay for equal work.

13. In view of the above discussion it is clear that the Labour Commissioner's order dated 6th August, 1999 impugned in the Writ Petition No. 47303 of 1999 has no relevance so far as the claim of 118 employees for regularization in the establishment of the employer is concerned.

14. I have heard learned Counsel for both the sides and perused the decisions relied upon by both the parties. So far as Writ Petition No. 13679 of 2000 is concerned whereby the reference that has been made by the State Government under Section 4K of the U.P. Industrial Disputes Act has been answered by the Tribunal against the workmen by the award dated 30th July, 1999. The Industrial Disputes Tribunal in its award after considering the evidence on record and other material have arrived at the conclusion that these workmen were employed through Contractors and these Contractors are registered Contractors under the provisions of Contract Labours (Regulation and Abolition) Act, 1975. The Tribunal has further recorded a finding that this is also true that these Contractors are given contract to supply labours for limited period and a particular assignment. The moment the assignment is over his contract also comes to an end automatically. It has no correction and concern with the Principal employer, namely, respondents No. 1 and 2. Nothing has been brought to the notice of this Court on behalf of the petitioner that these findings arrived at by the Tribunal to the effect that concerned workmen were employed through Contractors registered under the provisions of 1975 Act referred to above suffers from any error much less an error apparent on the face of record which may warrant interference under Article 226 of the Constitution of India. In this view of the matter I do not find any error in the award dated 30th July, 1999 passed by respondent Tribunal which may warrant interference by this Court in exercise of jurisdiction under Article 226 of the constitution of India. Writ Petition No. 13679 of 2000 deserves to be dismissed and is hereby dismissed.

Writ Petition No. 47303 of 1999 :

15. Now coming to the Writ Petition No. 47303 of 1999, by means of this writ petition under Article 226 of the Constitution of India, petitioner employer has challenged the order passed by the Labour Commissioner, Kanpur dated 6th August, 1999.

16. 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 which is under challenge here in this writ petition. Now coming to the challenge of the award the following dispute was referred :

"KYA SEVAYOJAK NO. 1 DWARA SANLAGNA PARISHISHT MEIN ULLIKHIT 118 SHRAMIKON KO NIYAMIT (REGULAR) NA KIYA JANA UCHTT THAHA/ATHAWA VAIDHANIK HAI ? YADI NAHIN, TO SAMBANDHIT SARMIK KYA HITLABH/ UPSHAM PANE KE ADHIKARI MAIN, KIS TITHISE TATHA KIS ANYA VWRAN SAHIT ?"

17. After the notices were issued to the parties, the parties exchanged their pleading. 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 1985 (50) FLR 205, BHEL Workers Association, Hardwar and others v. Union of India and others, wherein the Supreme Court has held as under :

"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 under Section 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 an establishment should be abolished or not. This is a matter for the decision of the Government after considering the matter required to be considered under Section 10 of the Act. Similarly the question whether the work done by contract

labour is the same or similar work as the 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 (ii)(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 under Section 10 of the Act in any process, operation or other work of the 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."

18. Thus, so far as the order passed by the Labour Commissioner under Rule 25(2)(v)(a) is concerned does not warrant an interference and challenge to the same is devoid of merit. So far as the claim application is concerned there is categorically recorded finding 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.

19. 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.

20. In view of the aforesaid finding 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 Commissioner in answering the claim application in favour of the workmen suffer from any error of law. This writ petition thus has no force and is accordingly dismissed.

21. In view of the above discussions, both the writ petitions are dismissed.

Petitions dismissed.