

(1992) 12 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 10033 (W) of 1991

Gurmit Singh and Others

APPELLANT

Vs

Indian Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Industrial Disputes Act, 1947 — Section 9A

Citation : (1993) 1 CALLT 64 : 97 CWN 899

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : P. Sengupta and Swapan Banerjee, for the Appellant; Soumen Bose, Sitaram Bhattacharyya (2) and A.K. Ghosal, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioners has been initially working under a contractor at Burnpur since 1974 in the furnace dismantling job in Melting shop of the Indian Iron and Steel Company (Respondent No. 1) Which is a Government of India undertaking. Each of the petitioners was appointed individually by the contractor. In 1982 the respondent No. 1 terminated the contract of the contractor. The labourers of the contractor however continued to work directly under the management of the respondent No. 1. With the abolition of the contract system the respondent No. 1 introduced the system of direct payment to the petitioners who were earlier working as contract labourers under the contractor. It is the contention of the petitioners that the respondent company is maintaining attendance registers and the petitioners are giving their attendance under the direct supervision of the company and the company is maintaining records of provident fund and the other facilities of the petitioners and the services rendered¹ by the petitioners are entered into Muster Roll Register. It is also the contention of the petitioners that the abolition of the contract system and the introduction of direct payment system brought about a basic qualitative change in the relationship between the respondent No. 1 and the petitioners who are engaged for dismantling job in Melting shop and that the

disappearance of the intermediary contractor have brought about a direct relationship of master and servant between the respondent No. 1 and the petitioners. It is however the grievance of the petitioners that in spite of the fact that direct relationship of master and servant has come into existence between the respondent No. 1 and the petitioners after the disappearance of the intermediary contractor the petitioners are being paid by the respondent No. 1 at the rate of the contract labour wages which is very low and far less than the salary and allowances paid to the other workmen employed by the respondent No. 1. The petitioners claim that they are entitled to have the same wage structure as is available to the departmentalised workers of the respondent No. 1. They claim wage structure at par with the departmentalised workers employed by the respondent No. 1 and other consequential benefits of service retrospectively with effect from 20th October, 1982 on the principle of equal pay for equal work.

2. According to the petitioners the dismantling job in the Melting shop¹ is of perennial nature as this job is carried out as per shut down programme of the furnaces and this job is continuous in nature as throughout the year the progressive shut down maintenances of the Melting shop furnaces are carried out. It is on the otherhand the contention of the respondent that the job of the petitioners was intermittent in nature and such job was required to be done only when steel Melting shop furnaces were brought down for repairs. In their affidavit-in-reply, it is however denied by the petitioners that their job was intermittent in nature. It is stated in paragraph-9 of the affidavit-in-reply that there are six furnaces in the Melting shop and at least three furnaces are required to be kept in working condition and as such. furnaces are brought down alternately for repairs and the petitioners are engaged for repairing purposes throughout the year. In paragraph-9 of the affidavit-in-opposition it is stated on behalf of the respondent No. 1 that initially when the petitioners were working under the contractor they used to get certain incentives from the contractor for completion of the job in time, but when the system of direct payment was started the said incentive was stopped and in lieu thereof they were given wages for the entire month and during the idle period when the job of dismantling was not necessary the petitioners were also being engaged on some other jobs as per necessity of the concerned department. It is also stated in the said paragraph that the attendance is maintained by the department in view of the fact that payment is made to the petitioners by the department directly. It is the contention of the respondent No. 1 that the petitioners being basically labourers under the contractor may claim equal treatment with the contractors' labourers in other departments, but not with the regular employees whose service conditions are totally different.

3. By a notification dated the 27th September, 1979 published in the Calcutta Gazette on the 11th October, 1979 the Government of West Bengal in exercise of the power conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibited employment of contract labour in

certain spheres in the establishment of the Indian Iron and Steel Company Ltd. The particular job of the petitioners was however not included in the said notification and it is the contention of the respondent No. 1 that the said fact shows that the job which the petitioners had been doing was not perennial in nature. This aspect of the matter however is not of much moment in the present context.

4. From paragraph-11 of the affidavit-in-opposition affirmed on behalf of the respondent No. 1 it appears that in a tripartite agreement it was agreed on or about the 8th April, 1982 that on the question of absorption of contract labourers on the permanent rolls of the company, out of 309 contract labourers working in the brick department of the company at the relevant point of time the job of 130 contract labourers were covered under the said Government Gazette notification and the job of the remaining 179 contract labourers were not covered by the same. It is further stated in the said paragraph that out of 130 contract labourers whose jobs were covered under the said notification, 88 contract labourers were absorbed on the permanent rolls of the company and the names of the balance 42 contract labourers who were earlier working on notified jobs but who could not be departmentalised were separately enlisted. The names of the remaining 179 contract labourers who had been working on non-notified jobs were also enlisted separately and the petitioners' names appear in that list which forms part of Annexure-D to the affidavit-in-opposition. The jobs required to be performed by the 88 absorbed contract labourers as well as by the balance 42 contract labourers who were earlier working on notified jobs and the jobs required to be performed by the 179 contract labourers who had been working on non-notified jobs, the petitioners being included in that category, were catalogued separately as would appear from Annexure-D to the affidavit-in-opposition. This Annexure-D would show that different types of jobs were earmarked for the different groups of labourers including the group in which the petitioners were enlisted.

5. The learned Advocate for the petitioners attracted my attention to the decision of the Supreme Court in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, in support of his contention that in view of the facts and circumstances a direct relationship of master and servant or for that matter of employer and employee had been established between the respondent company and the petitioners. In the said decision, it was held that where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer, and that the presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, it is found, though draped in different perfect paper arrangement, that the real employer is the Management and not the immediate contractor. It has however been observed in that decision that of course if there is total dissolution in fact between the disowning management and the aggrieved

workmen, the employment is, in substance and real-life terms, by another and the Management's adventitious connections cannot ripen into real employment. He has also attracted my attention to the decision of the Supreme Court in *Workmen of The Food Corporation of India Vs. Food Corporation of India*, . The Food Corporation of India adopted different methods at different places for employing labour for handling foodgrains. Initially a contractor was engaged by the Corporation, for handling storage and transit of foodgrains at one Depot. Subsequently, by negotiations and settlements, the contract system was abolished and the workmen were directly paid the wages by the Corporation. Attempt was however made thereafter to bring about a basic change in the system by reinducting the intermediary contractor. This attempt to change the status of the workmen from being workmen of the Corporation to becoming the labour employed by the contractor was resisted by the workers' union and it led to negotiations between the Corporation and the Union resulting in a settlement. The Corporation addressed communication to its various Regional Managers pointing out that the procedure in respect of direct payment to labourers laid down in the communication shall be followed. About 2 years thereafter the Corporation however changed the method of payment superseding the direct payment system and reintroducing contractor system and that too without giving any notice of change as contemplated in Section 9A of the Industrial Disputes Act, 1947. As a direct consequence of this change, the Corporation discontinued employment of 464 workmen attached to that Depot and brought in the intermediary contractor and treated the aforementioned workmen as the workmen employed by the contractor. In this background, the Supreme Court held inter alia, that the abolition of the contract system and the introduction of direct payment system, brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains and that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the Corporation and the workmen. It was further held therein that the intermediary screen having disappeared, the direct relationship came into existence and the conclusion is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master-servant relationship came into existence. In both the aforesaid cases what was held in essence was that there being employer and employee relationship between the parties concerned the provisions of the Industrial Disputes Act. would apply.

6. In view of the aforesaid two decisions of the Supreme Court and in view of the fact that since the abolition of the intermediary contractor in 1982 the petitioners are being directly engaged and paid for their works by the respondent No. 1, there is no doubt that master-servant or for that matter employer-employee relationship has been established between the respondent No. 1 and the petitioners and this relationship and its incidences are amenable to the provisions of the Industrial Disputes Act. But what the petitioners have prayed for in this

writ application is a direction upon the respondents to extend to the petitioners wage structure at par with the other departmentalised workers employed by the respondent company and other consequential benefits of service on the principle of equal pay for equal work. No data or materials however have been furnished for comparison as to with which category of departmentalised workers the petitioners claim parity of wage structure and other benefits and what is the existing difference between the emoluments and other benefits; available to them and such category of workers and whether the workers of such category are doing jobs of same or similar nature as done by the petitioners so as to attract the principle of equal pay for equal work. On the other hand, as I have already mentioned, the Annexure-D to the affidavit-in-opposition shows that different types of jobs have been catalogued for different groups of workers including the group in which the petitioners find place. Therefore even prima facie it does not appear that the petitioners and others are doing: jobs of same nature and in the circumstances, the Court is not in a position to consider even on the threshold the question of applicability of the principle of equal pay for equal work to the case of the petitioners. In disposing of the writ petition no other direction therefore can be issued except that the respondent No. 1 shall treat the petitioners in a manner consistent with the relationship of master and servant or for that matter, employer and employee as exists between them in the eye of law. The writ petition stands. disposed of accordingly. No cost is however ordered.