

(2008) 06 JH CK 0049

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5729 of 2005

Heavy Engineering Corporation Limited

APPELLANT

Vs

Their Workmen represented by the Engineering Mazdoor
Panchayat Union

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2008) 56 BLJR 2155 : (2008) 4 JCR 195

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : Rajeev Ranjan and Manish Mishra, for the Appellant; Babban Lal and C.S. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ is for quashing the award dated 28th of February, 2004, passed by the Industrial Tribunal, Ranchi in Reference Case No. 1 of 1998, whereby the Industrial Tribunal has held that the Respondent-workmen were entitled for regularization of then services and other benefits at par with regular appointees.

2. The petitioner is a Central Government undertaking in the Department of Heavy Industries and registered as a Company under the Companies Act. It has employees of different categories in its different units.

The employees of the petitioner-Company formed a cooperative Society of their own under the name of H.E.C. Employees Consumers Co-operative stores" registered under the provisions of Bihar and Orissa Co-operative Society Act, 1935 for the purpose of meeting their requirement of regular supply of ration items and consumer goods at Government controlled prices. The Cooperative Stores is governed by its own Governing Body in accordance with its own bye-laws. It had opened markets and grinding flour mills the vicinity of H.E.C.

township for the purposes of running its business of Co-operative stores. It had employed its own employees. However, the business of the Cooperative Stores could not succeed and it started incurring huge losses. The Managing Committee of the Cooperative Stores approached the Labour union, recognized by the H.E.C., to find out some solution so that the employees of the Cooperative Stores could be saved from retrenchment. The Union approached the Management of the H.E.C. and involved the conciliation machinery to sort out the problem of the Cooperative Stores. In the Conciliation proceedings, a Tripartite Agreement, involving the Management of the H.E.C., the H.E.C. workers' Union and the employees of the Cooperative Stores, was entered on 19.06.1990 in respect of 53 persons as regular employees and 16 others, who were on the muster roll of the Cooperative Stores. The understanding arrived at in the agreement was as follows:

- (a) Based on the principle of seniority in their respective category 38 regular employees of the H.E.C. Consumer Cooperative store will be absorbed as regular employees of H.E.C. with effect from the same date.
- (b) Those employees of H.E.C. Consumer Co-operative store who applied for better prospect in H.E.C. and whose name found place in the list of candidates (already selected) will be absorbed as regular employees of H.E.C.
- (c) The remaining employees who are in the roll of H.E.C. Consumer Co-operative stores (regular and muster roll) or 01.07.1970 and are left unabsorbed will be absorbed as employees of H.E.C. in corresponding status within three months from the date of agreement.

In terms of the Agreement, the remaining employees of the Cooperative stores, were also absorbed as regular employees of H.E.C. (Sic) due course.

However, the stand of the Management was that the (Sic) for absorbing the employees of the Cooperative stores was made as a (Sic) time offer with a clear stipulation that the employees of the Cooperative Stores who might be appointed after the date of agreement/settlement would not be considered for employment in the petitioner-Company (Sic) would they be entitled for any other benefit from the petitioner-Company.

Despite this, the employees of the Cooperative (Sic) who were appointed subsequent to the date of the above-refer Agreement, (altogether 44 in number), raised a demand for the absorption under the Petitioner-Company by way of regular appointment and pay-scales according to the work and other benefits under petitioner-Company. On refusal by the Company they raised an Industrial dispute, through the Labour Union. The dispute was referred by the (Sic) Government to the Industrial Tribunal for adjudication. The (Sic) reference was as follows:

Whether the workmen Shri N.K. Pandey and 43 others are entitled for regular employment, pay-scales according to work and other benefits in H.E.C. Ltd.,

Dhurwa, Ranchi? If so, since when?

3. The claim of the workmen for their regular appointment, pay-scales according to work and other benefits in H.E.C. Ltd. was based on the following grounds:

After the petitioner-Company was established, it had employed about 22,000/- employees and had also constructed a township for its employees, contiguous to its factory nearby. For the benefit of its employees, the petitioner-Company had established Canteen, Hostels and Shops within the township so that its employees may get essential commodities at Government controlled rates. The petitioner-Company got the Employees Cooperative Stores, registered in the name and style of H.E.C. Employees Consumers Co-operative Stores Ltd. Though the Cooperative Stores had its own bye-laws but it was never acted upon, since the petitioner-Company had full financial and managerial control over the Cooperative Stores.

On 01.07.1970, the Management of the petitioner-Company took over control of Management of the Cooperative Stores. Thereafter, in the same year, a large number of employees, working in the Cooperative stores were transferred to different units of the petitioner-Company, namely, Foundry Forge Plant, Heavy Machine Building Plant, Town Administration Division Education Units, Railway and Movement etc.

In the year 1973, the Petitioner-Company constituted a Committee comprising of its top-ranking Officers to manage to look after the affairs of the Cooperative Stores.

On 19.06.1970, about 44 employees of the Cooperative Stores, were transferred by the H.E.C. Ltd. to the (Sic) departments in the H.E.C. Ltd. Likewise, on 04.09.1978 a second of about 44 employees were similarly transferred to the (Sic) units of the H.E.C. Ltd. The process of transfer of the employee Cooperative stores continued even till 1985 and one of employees, namely, Krishna Kumar who had joined the (Sic) Cooperative Stores on 24.12.1973 was transferred on 15.02.198 the Russian Hostel.

Thus the workmen who were initially (Sic) under the H.E.C. Employees Consumer Cooperative Stores transferred to the various other departments under the H.E.C. continued to be employed by the petitioner-Company in (Sic) in departments and were even provided Medical facilities at (Sic) the employees of the permanent establishment of the (Sic) Deductions towards contributory Provident fund were also (Sic) from their salary and they were paid annual Bonus on the same and pattern as given to the employees of the (Sic) establishment. However, these workmen though working for more than 20 years, were not absorbed in the permanent establishment (Sic) Company nor were they paid, salary at par with the regular employees of the Company thereby creating a dispute with the Management of the Petitioner-Company. At the intervention of this recognized Union, namely, the Engineering Mazdoor Panchayat Union, an Industrial Dispute was raised and referred to the Industrial Tribunal for

adjudication in terms of the reference stated above.

4. The Management of the petitioner-Company contested the claim of the workmen before the Tribunal on the following grounds:

(i) There is no existence of relationship of employer and employee between the Management of Heavy Engineering Corporation Ltd. and the workmen.

(ii) The union namely, the Engineering Mazdoor Panchayat Union, has no locus standi to represent the workmen (Sic) to raise any industrial dispute on their behalf against the Management of the H.E.C. Ltd.

(iii) That the dispute under reference cannot be termed as an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act.

(iv) The Workmen are essentially the employees of the Cooperative Stores, which is an altogether separate establishment having its own identity and Board of Management regulated by its own bye-laws and has no concern whatsoever with the H.E.C. Ltd. and the Management of the H.E.C. Ltd. had never maintained any control of Management over the Cooperative stores.

5. The Tribunal by its impugned Award dated 28.02.2004 had allowed the claim of the workmen by recording its finding that the workmen were entitled for regular employment and to the pay-scales according to work and other benefits in H.E.C. Ltd., Dhurwa, Ranchi since the date of their employment when they started rendering services in H.E.C.

This finding was on the basis of the evidences that the H.E.C. has been employing the workmen, who were initially the employees of the Cooperative Stores, in various units of the H.E.C. Ltd. and they continuously worked for more than 10 years.

6. The petitioner in this writ petition has challenged the impugned order of the Tribunal reiterating the same grounds as raised before the Tribunal. Mr. Rajiv Ranjan, learned Counsel for the petitioner submits the following arguments:

(i) Despite the fact that the Cooperative Stores was not functional yet it had continued to make appointments of the workmen. It was only on humanitarian grounds that the H.E.C. Ltd. engaged the services of the workmen of the Cooperative Stores in the various Departments of the H.E.C. Ltd. and they were paid for their jobs at par with the contract labourers engaged in the establishment of the H.E.C. for various categories of jobs. In absence of any notification under the Contract Labour Abolition Act, prohibiting employment of contract labourer for rendering services in the H.E.C. Ltd., the petitioner-Company could employ such employees of the Cooperative Stores as contract labourer. However, since there was no relationship of employer and employee between the petitioner-Company and the workmen, the status of the workmen continued to remain as contract labour and they are therefore, not entitled for absorption under the petitioner Company. Furthermore, the petitioner-Company

has been declared sick and the orders of winding up has been initiated, which is pending before this Court in C.P. Case No. 5 of 2004. The work force of the Company has been drastically reduced from 14,000/-employees to less than 3,000/- regular employees.

(ii) In the award of the Tribunal, there is no finding that the contract of employment for the engagement of the concerned workmen in the various Departments of the H.E.C. Ltd. is a mere camouflage and therefore, contract labourer had no right for their regularization under the petitioner-Company.

(iii) Though, the services of these workmen used to be engaged in some of the Departments in the H.E.C. Ltd. but their selection was not based on relevant rules of procedure and, as such these workmen could be treated only as contract labour and such persons cannot claim any legitimate right for being regularized.

(iv) The H.E.C. Ltd. can at best be considered as a principal employer and therefore, its liability would extend only to ensure that the contract wages is paid to the contract labourers and it is not liable to pay any other additional wages. The workmen being in the status of contract labourers, cannot claim parity of wages with regular Class IV employees on the principle of equal pay for equal work.

Learned Counsel has relied upon the following judgments of the Supreme Court in support of his contention.

(i) Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

(ii) Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, .

(iii) Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

(iv) Hindustan Steel Works Construction Ltd. Vs. Commissioner of Labour and Others, .

(v) Food Corporation of India Vs. Shyamal K. Chatterjee and Others, .

(vi) State of Haryana and Another Vs. Tilak Raj and Others, .

(vii) State of Haryana Vs. Jasmer Singh and others, .

(viii) S.C. Chandra and Others Vs. State of Jharkhand and Others, .

7. Countering the arguments of the learned Counsel for the petitioner, Mr. Babban Lal, learned senior counsel representing the Respondent-workmen would raise the following arguments:

(a) Undisputedly, the H.E.C. Consumer Cooperative Stores Ltd. though established as a separate entity under the Societies Act was in fact floated by the petitioner-Company for the benefit of its own employees in order to facilitate

availability of essential commodities at Government controlled rates. After lifting of control in the supply of essential commodities by the Government the commodities were available at competitive rates in the market and, therefore, the fair price shops and other stores established by the Company through the Cooperative Consumer Stores, could not sustain its financial stability. Consequently, the petitioner-Company took over the Management of the affairs of the Cooperative Stores and began taking the services of the persons employed in the Cooperative Stores, in its various other Departments. This process continued for more than 20 years and during this period, the workmen have been working directly under the control and supervision of the Management of the H.E.C. Ltd.

(b) This being the factual position, the relationship between the Management of H.E.C. Ltd. and the Respondents workmen is that of employer and employee. The veil of contract employment cannot conceal this fact. The livelihood of the workmen substantially on their labour rendered to produce goods services offered for the benefit and satisfaction of the H.E.C. Ltd. and, therefore, the presence of dubious intermediaries like the Cooperative Store cannot alter the direct relationship between the Management of the H.E.C. and the workmen.

(c) The Tribunal has recorded its finding that the workmen have been working in the different Departments of the H.E.C. Ltd. for a considerably long period and their transfers and postings are regulated by the Management of the H.E.C. Ltd. They do the same work on the same post as the regular employees of the H.E.C. Ltd. These workmen receive their salaries from the funds of the H.E.C. Ltd. and, therefore, the conclusion is that there exist relationship of employer and the employees between the workman and the Management concerned.

(d) The plea of the Management of the petitioner-Company that the Respondent-workmen are engaged as contract labour is apparently a camouflage and not a genuine contract employment.

In support of his contention, learned Counsel has relied upon the following judgments of the Supreme Court:

(i) Hussainbhai v. The Factory Tezhilali Union and Ors. reported in 1978 Lab. I.C. 1264.

(ii) Steel Authority of India Ltd. and Ors. v. National Union Water Front Workers and Ors. reported in 2001 Lab I.C. 3656.

(iii) A.P.S.R.T.C. and Ors. v. Srinivas Reddy and Ors. reported in 2006 Lab. I.C. 1302

(iv) Nehru Yuva Kendra Sangathan Vs. Rajesh Mohan Shukla and Others, .

(v) Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

8. Learned Counsel argues that the ratio in the case of Uma Devi (Supra) would not apply to the facts of the present case, on the issue relating to equal pay for

equal work, since the matter relating to the employees through Contractor was never raised before the Supreme Court in the aforesaid case. Learned Counsel would explain that even in Uma Devi's Case (Supra), the Supreme Court has held that the concept for equal pay for equal work is different from the concept of conferring permanency on the appointees, who have been appointed on ad hoc basis temporary basis or based on no process of selection as envisaged by the Rules.

9. Learned Counsel argues further that the ratio in the case of Steel Authority of India Ltd. (Supra) has no application in the facts of the present case, since regular appointment and regularization of employees are two different concepts. While regular appointment is a continuous appointment, regularization means to contend any procedural irregularities and to cure the defects in making the appointments.

10. On the basis of the rival arguments, the primary question, which would arise for consideration is whether in the facts and circumstances of the case, a direct relationship of employer and employee between the petitioner-Company and the Respondent-workmen does exist and whether the workmen are entitled to their claim for regularization in equal pay-scales under the Petitioner-Company?

11. The Petitioner-Company has firmly denied such relationship on the ground that the Respondent-workmen are essentially the employees of the Cooperative Stores and were never recruited or appointed under the Petitioner-Company in accordance with the procedures for appointment. Since there is no notification prohibiting the employment of contract labour in the Petitioner-Company, the employees of the Cooperative Stores used to be hired by the Petitioner-Company as contract labour and employed in the various units of the Petitioner-Company. As such, the Respondent-workmen can never claim any right for their regularization in services under the Petitioner-Company.

12. On the contrary, from the findings recorded by the Tribunal based on evidences adduced before it, the fact which emerges is that though the Consumer Cooperative Stores was brought into existence as an independent entity after registration under the Cooperative Societies Act but in course of time, it had become dysfunctional. It has also come in evidence that it was the petitioner-Company, which used to provide funds for payment of salaries to the Respondent-workmen and the services of the Respondent-workmen used to be utilized by the Petitioner-Company in its various units and this has been continuing for more than 20 years. It is not the case of the petitioner-Company that the H.E.C. Consumer Cooperative stores, though originally established for the purposes of facilitating availability of essential commodities at Government Fixed Rates to the employees of the Petitioner-Company, had at any subsequent point of time altered its objects to function as contractors for supply of labour. Neither is there any such understanding between the Petitioner-Company and the Management of the Cooperative Stores for deployment of the employees of the Cooperative Stores on contract basis to the Petitioner-Company. It has also

come in evidence that the senior officials of the Petitioner-Company were virtually managing the affairs of the Cooperatives Stores including its financial liabilities. The facts further disclose that though the Respondent-workmen were appointed under the Consumer Cooperative Stores but for all practical purposes, they were rendering their services in the various units of the Petitioner-Company and had ceased to be employed for any services related to the business of the Consumer Cooperative Stores as because the Cooperative Stores had become dysfunctional since over the past more than 20 years. The inference, which could legitimately be drawn is that the Petitioner-Company has been nourishing the defunct Consumer Cooperative Stores only for the purposes of utilizing the services of the employees of the Consumer Cooperative Stores and for this purpose, the further appointment under the Consumer Cooperative Stores continued to be made, even though the establishment had become dysfunctional on account of loss of business. The Petitioner-Company has been adopting such process of obtaining services of the Respondent-workmen, taking advantage of the fact that there is no notification under the Contract Labour Abolition Act, prohibiting the employment of the Contract labour under the petitioner-Company.

The above facts have been recorded by the Tribunal in its findings, which is based on the evidences on record. Though the Tribunal has not recorded any finding as to whether the employment of the Respondent-workmen by the Petitioner-Company is a genuine employment of contract labour or a mere camouflage, yet the facts as stated above do clearly spell out that the employment of the Respondent-workmen by the Petitioner-Company in its various units since over the past more than 20 years is a mere camouflage, and not a genuine employment of contract labour. This is affirmed from the admitted fact that the Petitioner-Company has been engaging the services of the Respondent-workmen in its various units since the past twenty years and the Respondent-workmen have been working in the various departments of the Petitioner-Company under the direct control and supervision of the Officers of the Petitioner-Company and these workmen have been frequently transferred and posted in the various departments of the Petitioner-Company. The Petitioner-Company therefore cannot take advantage of the dubious intermediaries like the Consumer Cooperative Stores on the plea of engaging contract labour. Could it not be inferred that the Management has been adopting such practice only to avoid the liability of the financial trappings as otherwise would be payable to the workmen if absorbed regularly?

13. Under such circumstances, even if the Respondent-workmen were not directly appointed under the Petitioner-Company through a regular selection process, yet the fact that such workmen were found fit to continue their services under the petitioner-Company continuously for more than 20 years, cannot alter their status of being direct employees under the Petitioner-Company. The irresistible inference is that between the Petitioner-Company and the Respondent-workmen there exists a direct relationship of employer and employee. The veil of contract employment cannot alter this fact.

14. It is true that the Respondent-workmen were not appointed directly in the Petitioner-Company by way of regular appointment. But can it be said that the appointment of the Respondent-workmen by the Petitioner-Company in its various units, since the past 20 years was an illegal appointment? The fact that the services of the Respondent-workmen used to be taken continuously for the past over 20 years without any break would invariably lead to the presumption that these workmen did possess the requisite qualification and there were vacant posts for their engagement. It is not a case of contract employment for a temporary period or appointment of workmen on casual/daily wage basis for a limited period.

15. In the case of Uma Devi (Supra), the issues involved were related to the claim of temporary/ad-hoc employees for their regularization. In the present case, the fact situation is otherwise. The Respondent-workmen were engaged in continuous service over more than 20 years by the Petitioner-Company and they have been rendering services equal to the services rendered by the regularly appointed employees of the Petitioner-Company.

Even in Uma Devi's case, the apex Court while considering the situation where the employees though not regularly appointed, had worked for more than ten years in duly sanctioned posts without cover of the orders of Courts or Tribunals and it was held appropriate that the question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by the apex Court in several earlier judgments.

In the present case, the facts clearly suggest that the Petitioner-Company has established a direct relationship of employer and employee with the Respondent-workers and has been employing the services of the Respondent-workmen continuously for over 20 years. This situation does create a legitimate expectation in favour of the Respondent-workmen that their services would be regularized and that they do deserve to be paid the same salary/wages as paid to the regular employees of the Petitioner-Company on the principle of equal pay for equal work.

16. I do not find any reason, therefore, to interfere with the findings of the Tribunal in the impugned Award. In the result, this writ petition is dismissed. But in the facts and circumstances, there shall be no order as to costs.