(2009) 04 JH CK 0041

In the Jharkhand High Court

Heavy Engineering Corporation Ltd. APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:
Industrial Disputes Act, 1947 — Section 10

Citation : (2009) 122 FLR 431 : (2011) 3 JCR 146

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

i. For the issuance of an appropriate writ, orders, directions or a writ in the nature of certiorari quashing the award pronounced on 17.11.2002 passed by the Respondent No. 1 as contained in Annexure-10 whereby and whereunder the reference has been decided in the affirmative by entitling the concerned 34 workmen, the same pay scale and other benefits as prevalent in the H.E.C. Ltd.

ii. For the issuance of an appropriate writ, orders, directions or a writ in the nature of certiorari quashing the notification No. 14/D2-28014/93(L&E) 407 dated 28th February, 1994 whereby and whereunder the alleged dispute was referred for adjudication before the Labour Court Ranchi by referring as to whether the concerned 34 workmen of H.E.C. Consumer Cooperative Stores were entitled to the same pay scale and to other benefits as prevalent in the H.E.C. Ltd. Dhurwa, Ranchi without impleading the H.E.C. Consumer Cooperative Stores as a party.

iii. For the issuance of an appropriate writ, orders, direction to hold and declare that reference made u/s 10 of the Industrial Disputes Act as contained in Annexure-4 as grossly illegal and arbitrary as there did not exist any Industrial Dispute Vis-a-vis the concerned workmen and the management of H.E.C. Ltd.

when according to reference itself the concerned workmen were employees of H.E.C. Consumer Cooperative Stores and not that of H.E.C. Ltd. and the reference being illegal and without jurisdiction and also bad for non- joinder of the necessary party i.e. H.E.C. Consumer Cooperative Stores and not maintainable as against the petitioner.

2. The facts, in brief, are set out as under:

The petitioner is a Government Company under the Companies Act, 1956 and all its members Directors are citizen of Indian and fully entitled to protection of their fundamental and other legal rights as guaranteed under the Constitution of India. In order to achieve its objective as contained in the Memorandum and Article of Association, it has employed employees of different categories in all its units namely, Foundry Forge Plant, Heavy Machine Tool Plant, Heavy Machine, Building Plant, Town and Administration division and the Medical Division and in order to meet various requirements of the employees living in the township, different infrastructure had grown-up of their own. One of such requirement was to have regular supply of ration and consumer goods on the process controlled '' by the Government and for the above purpose the employees of the H.E.C. ltd. formed a Cooperative Society of their own under the name and style of H.E.C. Employees Consumer Cooperative Stores ltd., Ranchi(hereinafter called as the Cooperative stores'' for short) which was registered under the provision of Bihar and Orissa Cooperative Society Act, 1935 bearing Certificate No. 41/R of 1961. The said cooperative stores had its bye-laws duly approved by the authority under Bihar and Orissa Cooperative Societies Act having its defined objectives and other Rules for the proper functioning of the Cooperative Stores. The main amongst other objectives, was to arrange fur the purchase and sale to its members at reasonable rates the articles of consumption and for their domestic requirement and necessities of life.

3. In order to fulfill the objectives, the Cooperative stores had opened a ration shop and grinding flour mill in the vicinity of township. In order to run the business of the Cooperative stores it had employed its own employees and the petitioner had nothing to do with it. However, initially the cooperative stores functioned well but later due to opening of large number of shop and establishments in the vicinity of township the shop of fair price and other shops run by the individuals the business of the Cooperative stores came down and it started incurring huge loss. Accordingly, Hatia Project Workers Union, being the recognized union approached the Management Company and also the conciliation machinery to sort out the problem and with the intervention of conciliation machinery the Management entered into a tripartite Settlement on 19.06.1970 In respect of 53 persons who were working as regular employees and 16 as muster roll employees in the said Cooperative stores. Accordingly as per agreement/settlement candidates were absorbed by the; Management. However, the Management vide its letter dated 19.6.1970 under the signature of the then Chief Personnel clarified that employees of Cooperative Stores who were

appointed after the date of Agreement/Settlement would not be considered for employment in the petitioner company as internal candidates and would not be entitled to any other benefit from the petitioner.

4. Thereafter, a dispute was raised and the following reference vide case No. 3/94 was made vide notification dated 28.2.1994 to the labour Court, Ranchi for adjudication.

Whether not to give pay scales and other benefits like regular employees of H.E.C., Dhurwa, Ranchi to the workmen Sarbashri (1) Mahabir Prasad, (2) Bharath Roy, (3) J.N. Baraik, (4), C. Kerkatta, (5) Nathuni Singh, (5) A. Surin, (7) T.N. Singh, (8) K.M. Jha, (9) B. Sharma, (10) Jaybir Jha, (11) Manikchand Prasad, (12) J.M. Jha, (13) Gautam Roy, (14) Bishwanath Prasad, (15) V.N. Jha, (16) Pitambar Thakur, (17) A.K. Singh, (18) S.N. Mishra, (19) R.K. Singh, (20) R.D. Singh, (21) Bhagi Mahto, (22) S.K. Dutta, (23) Yogendra Singh, (24) Sudarshan Singh, (25) Mahesh Thakur, (26) Birendra Tiwary, (27) Mahali Oraon, (28) Md. Ashaget Ali (29) Ganga Bahadur, (30) Mahant Prasad, (31) Singhasan Singh (32) Niwash Singh, (33) Rajendra Singh and (34) Md. Jalil of H.E.C. Consumers Co-operative Stores is proper? If not, what relief these workmen are entitled to?

5. The learned Industrial Tribunal finally passed the Award in favour of workmen on 12.1.2002 and held that the respondents workmen were entitled to parity in pay scale and other benefits like regular employees of H.E.C. Ltd., Dhurwa, Ranchi and the same is sought to be challenged in this Writ Petition.

6. Sri Rajiv Ranjan, learned Counsel appearing for the petitioner submits that there was no employee-employer relationship and thus, no Industrial Dispute visa-vis concerned workmen of H.E.C. Consumer Cooperative Store and Management of H.E.C. could have been invoked under the Industrial Disputes Act. He has also contended that the claim of equal pay for equal work at par with regular employee of H.E.C. Ltd. in absence of any employee-employer relationship was illegal and unsustainable more so when the nature of job, work assigned and the Organisation were different. It has further been contended that the concerned workmen are admittedly employee of the Cooperative Store which is different and distinct establishment and thus, they cannot claim equal pay and other benefits at par with regular employees of H.E.C. It has also been contended that the tripartite settlement was binding on all the workmen for the sole reason that it was entered into between the Management and the recognized Union. It has further been contended that as per the settlement any appointment in the co-operative Society after the cut off date i.e. 19.6.1970 would not be entitled for employment in the petitioner company.

7. The respondents have submitted that the learned Tribunal had given a finding that they were workmen and employees of the petitioner. It has also been submitted that Hatia Project Workers Union was not representing the concerned workmen and they were represented by the respondent No. 2 as such the letter

and the settlement by other Union is neither relevant nor binding. It has further been submitted that the extension of the facility to the employee of the Cooperative Stores for making application against infernal advertisement vide office order No. 199/68 shows that they were employees of the petitioner Management. The respondents have further filed an Interlocutory Application pointing out that in an identical matter in a writ petition being W.P.(L) No. 5729/2005 this Court vide its order dated 13.6.2008 dismissed the writ petition preferred by the petitioner Management upholding the Award. In the said order it was also held that the facts clearly suggest that the direct relationship of employee and employer was established and they were also entitled to equal pay for equal work.

8. I have considered the rival submissions and pleadings and the case law on the issue. The matter relates to 34 workmen and the reference was with respect to claim of parity in pay scale and other benefits like regular employees of H.E.C. Ltd. The issue does not relate to regularization and or discrimination as such, but instead the Issue relates to parity in pay scale between the respondents workmen who are employees of H.E.C. Consumer Cooperative Stores and the workmen of the petitioner Management of H.E.C. Ltd.

9. The reference and the award in this case is confined to the issue as to whether they were entitled to the same pay scale and other benefits like employees of H.E.C., Dhurwa, Ranchi.

10. The contention raised by the learned Counsel for the respondent that the jurisdiction of the High Court to interfere against an Award was very limited and he has also referred to and relied upon (2001) 2, SCC 54 to support his contention. There Is no dispute about the settled law but in the instant case the claim of parity with regard to pay-scale and benefits itself is under challenge and the Award is on the face of it unsustainable in view of the settled law as discussed hereinbelow. The law in this regard is well settled. The Hon''ble Supreme Court in State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., held that the claim of equal pay for equal work must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed.

11. Again in a recent Judgment reported in Official Liquidator Vs. Dayanand and Others, a Bench of three judges of Hon''ble Supreme Court at para-95 and 96 while considering a number of Judgments on the issues held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scale and before entertaining and accepting the claim based on the principle of equal pay for equal work, the court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional needs etc. it also reiterated the view that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and unless there are any malafide, its evaluation should be accepted and finally at para-100 held as under:

As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the Company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the official Liquidators so as to facilitate payment of salaries and allowances to the company-paid staff in the regular pay scale trout the Consolidated Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment docs not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work.

12. Regard being had to the facts and circumstances of the case, the admitted fact remains that the respondents workmen have neither been regularized nor their qualifications or mode of recruitment vis-a-vis regular employees are the same and there are many other distinguishing features and in view of the aforesaid Judgment(Supra) the direction to pay equal pay for equal work and other benefits like regular employees of H.F.C. Ltd. by the Industrial Tribunal, Ranchi appears to be erroneous, illegal and unsustainable in the eyes of law. Equity will mean equal in all respect.

13. The reliance on the tripartite settlement also is misplaced since it specifically states that only such employee of the Co-operative Stores who were appointed prior to 19.06.1970 were to be regularised and those appointed after the 19.06.1970 i.e. date of settlement will not be entitled for employment with the petitioner company.

14. Considering the aforesaid facts and circumstances of the case and also in view of the settled law as laid down by way of authoritative pronouncement of a Bench of three Judges of Hon''ble Supreme Court in an identical issue, with respect, I beg to differ from the Judgment: dated 13.6.2008 passed by the other learned Single Judge of this High Court in W.P (L) No. 5729 of 2005. In any case I am bound by the Judgment and the ratio laid down by the Hon''ble Supreme Court.

15. This writ petition is accordingly allowed and the impugned Award dated 12.11.2002 is hereby quashed with no order as to cost.