
(2010) 07 AHC CK 0394
In the Allahabad High Court

Hindustan Cable Ltd.

APPELLANT

Vs

Presiding Officer, I.T. and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2010) 127 FLR 47 : (2010) 4 LLJ 788

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present writ petition is directed against common awards passed by the Industrial Tribunal (I), U.P. at Allahabad dated 31st of January, 1997 in Adjudication Case Nos. 142 of 1993, 143 of 1993, 144 of 1993, 145 of 1993, 19 of 1994, 20 of 1994, 23 of 1994, 24 of 1994 and 25 of 1994, in eleven references, in favour of the workmen-respondent Nos. 3 to 13. The respondent No. 2 is the work contractor.

2. M/s. Hindustan Cables Ltd., petitioner herein, a Government of India Undertaking, is a company situate at Naini, District Allahabad, was established in year 1987 and production was started in 1990.

3. The case of the petitioners is that for the purposes of land scaping and setting up and maintenance of lawns and garden etc., contract was given to contractors including the respondent No. 2 who got it done through their own employees. The workmen respondent Nos. 3 to 13 raised industrial disputes against the termination of their employment which were referred by the State Government u/s 4-K of the U.P. Industrial Disputes Act for adjudication. The State Government referred the disputes by different orders on identical terms - Whether the employers have terminated the services of the workmen w.e.f. 11th January, 1993 validly? If not so, to what relief the concerned workman is entitled?

4. The Industrial Tribunal by the impugned awards has held that the workmen

were employed by the petitioners and held that their services were not validly terminated and ordered their reinstatement with continuity of service, back wages and all other benefits which they would have got if their services had not been illegally terminated.

5. It may be placed on record that during the pendency of the present writ petition, an amendment application to amend the writ petition was filed which was allowed by the order dated 5th of March, 2009. By way of amendment, a plea was sought to be raised that in the case of the petitioner company itself, this Court has ruled that it is only the Central Government which is competent to make a reference u/s 10 of the Industrial Disputes Act 1947 and the State Government cannot make a reference u/s 4-K of the U.P. Industrial Disputes Act to a Tribunal constituted by the State Government. It has been further pleaded that the said plea goes to the very root of the matter and it raises a pure question of jurisdiction.

6. The learned Counsel for the respondents chose not to controvert the factual aspect of the case by filing a counter affidavit.

7. Heard the learned Counsel for the parties. The learned Counsel for the petitioners submits that in view of the decision given by this Court in the case of the petitioner company in respect of other workmen similarly situated, it has been held that reference made by the State Government u/s 4-K of the U.P. Industrial Disputes Act is invalid and the award of the Industrial Tribunal was set aside. The same course of the action should be followed in the present case also. On merit, it was contended that there is no evidence worth the name on the basis of which an inference that the respondent workmen were employed or engaged by the petitioners, can be drawn. In other words, the findings of the Industrial Tribunal that there was a relationship of employer and employee in between the parties is perverse and against the material on record. Further, it was submitted that the references as were framed are themselves bad in as much as the reference presupposes the existence of relationship of employer and employee between the parties and on that supposition the references were made to decide the legality and validity of the termination order. It was not ambit and scope of the reference and the Industrial Tribunal wrongly proceeded to decide whether there is a relationship of employer and employee between the parties, therefore, its order is without jurisdiction.

8. The learned Counsel for the contesting respondents, on the other hand, supports the impugned awards and submits that before the Industrial Tribunal, the jurisdiction and authority of the Industrial Tribunal to proceed u/s 4-K of the U.P. Industrial Disputes Act was never questioned. This being so, he submits that the said plea should not be permitted to be raised for the first time in the writ petition. He supports the impugned awards on other counts also.

9. Considered the respective submissions of the learned Counsel for the parties and perused the record. Following three questions fall for determination:

1. Whether the reference made by the State Government u/s 4-K of the Industrial Disputes Act in respect of the petitioner company, a Government of India Undertaking, is valid? In other words, whether the State Government is the "appropriate authority" in respect of the respondent workmen?

2. Whether there is evidence to support the findings returned by the Industrial Tribunal that relationship of employer and employee exists between the parties?

3. Whether the reference made by the State Government when relationship of employer and employee was disputed, to determine the legality and validity of the termination orders of the contesting respondents is valid?

10. Taking the first point first, it may be noted that the facts are almost undisputed. The petitioner is a Government of India Undertaking having its registered office at 9, Elgin Road, Calcutta and one of its factories is situate at Naini, Allahabad wherein according to the contesting respondents they were engaged as gardeners. The contention of the petitioners' Counsel is that the appropriate authority for the petitioner company is the Central Government and the references made by the State Government were beyond its jurisdiction. The learned Counsel for the contesting respondents besides submitting that no such plea was put forward either before the Industrial Tribunal or in the original writ petition, could not dispute the above submission of the petitioners.

11. The learned Counsel for the petitioners submits that the said controversy is no longer res integra in respect of the petitioners itself and has been adjudicated upon by this Court in writ petition No. 29283 of 2007: Hindustan Cables Ltd., Naini, Allahabad v. Presiding Officer, Industrial Tribunal (I), U.P. at Allahabad and Ors. decided on 12.1.2009 by following an earlier judgment of this Court in the case of National Textile Corporation (U.P.) Ltd., Kanpur and Anr. v. State of U.P. and Ors. 2005 LIC 485 wherein the following has been held:

It is not disputed that the petitioner is a Government of India Undertaking which is being run for and on behalf of the Central Government. The Industrial Disputes Act 1947 (hereinafter referred to the "Central Act") empowers the Central Government to refer labour disputes u/s 10 of the U.P. Industrial Disputes Act to the presiding officer appointed by the Central Government. Under the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the State Act), the State Government can refer a dispute u/s 10-K to the labour court and the Industrial Tribunals established under the State Act. A perusal of the references order shows that all the references were made by the State Government u/s 4-K of the said Act. However, learned Counsel for the respondents contends that u/s 39 of the Central Act, the Central Government had delegated the power of references to the State Government and therefore, the State Government was within its jurisdiction to have referred the matter. A perusal of the notification dated 3rd July 1998 shows that the power under the Central Act had been delegated to the Central Government, meaning thereby that the reference had to be made u/s 10 of the Central Act and only to the authority appointed thereunder. In the present

case, the reference has been made u/s 4-K of the State Act and also to the authorities appointed under the State Act. This argument has been considered in detail by a learned Single Judge of this Court rendered in the case of National Textile Corporation (U.P.) Ltd., Kanpur and Anr. v. State of U.P. and Ors. 2005 LIC 485. After relying upon several decisions of the Apex Court, it held that the State Government could not have referred a matter with regard to a Central Government Undertaking under the State Act. The present issue is entirely covered by the aforesaid decision.

12. Further reliance was placed upon *Mazdoor Sangh, Bharat Pumps and Compressor Ltd., Naini Allahabad v. Industrial Tribunal-I-Allahabad and Anr.* 2004 (100) FLR 10 wherein it has been held that it is the Central Government with which the jurisdiction is vested to make a reference under the Industrial Disputes Act and the reference u/s 4-K of the U.P. Industrial Disputes Act by the State Government is not competent.

13. The learned Counsel for the respondent workmen could not say anything in reply except that the said plea was not raised before the Industrial Tribunal. In my considered view, the petitioners may be permitted to raise the said issue in the writ petition as the facts are not in dispute. A plea which goes to the root of the matter, on the basis of facts already on record can be permitted to be raised in writ petition, for the first time. The plea that the State Government was not "an appropriate authority" in respect of the petitioners which is a Government of India Undertaking goes to the very root of the matter.

14. In the case of the petitioner company itself it has been held that such a reference made by the State Government is incompetent in writ petition No. 29283 of 2007 referred to above. Respectfully following the above decision, I find sufficient force in the first submission of the learned Counsel for the petitioners and it is decided accordingly.

15. In the present case, the question as to whether the appropriate authority in respect of the contesting respondents is the State Government or the Central Government assumes great importance in view of the fact that the definition of "workman" as noticed in the case of *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, given under the U.P. Industrial Disputes Act vide Section 2(z) is wider than the definition given under the Industrial Disputes Act, 1947. It has been noticed in the case of *Steel Authority of India Ltd. (supra)* by the Apex Court while distinguishing the case of *Basti Sugar Mills* that the use of word "any" in the definition of "workman" as given u/s 2(z) of the U.P. Industrial Disputes Act makes the difference qua a workman engaged by a work contractor. That is the reason that the Apex Court has distinguished its earlier judgment given in the case of *Basti Sugar Mills*, AIR 1964 SC 353 while deciding the case of *Steel Authority of India Ltd. (supra)*.

16. Coming to the next point, it may be noted that the case of the petitioners

was that the respondent No. 2 was work contractor who engaged the respondent Nos. 3 to 13 herein. These persons were not engaged directly or indirectly by the petitioner company and therefore, no relationship of employer and employee existed between the parties. The petitioners neither appointed them nor terminated their services. It is the respondent No. 2 who engaged them and terminated their services. It was also submitted that the petitioner is a public undertaking and they have got a system of appointment. The procedure which was adopted by them was to call names from employment exchange whenever there is a vacancy. In absence of availability of suitable candidates through employment exchange, the vacancies are advertised in newspaper after obtaining no objection certificate from the employment exchange. On successful selection, appointment letters are issued to the workmen and they are kept on probation and thereafter on completion of probation period they are confirmed. It was further pleaded that attendance of the workmen is recorded through computerized attendance recording system that is punching of card in the punching machine. The wages to all the employees are disbursed through bank situate near the factory main gate and not directly. It was further pleaded that none of the respondents were ever issued any appointment letter, wage slip or punching card whatsoever. As already noticed herein above, the sum and substance of the defence of the petitioners as was set out before the Industrial Tribunal through their pleadings was, that the contesting respondents were not employed or engaged by them but were engaged by the work contractor respondent No. 2, Sri Bamdeo Misra, Proprietor of M/s. A to Z Services.

17. The Industrial Tribunal proceeded to decide the said controversy on the basis of Exts. W-22 to W-28 which are gate passes issued to the workmen concerned and Exts. E-1 and E-3. Ext. E-1 is the letter purported to have been sent by the workmen namely Pappu, Jagatdhari, Pyarelal and Balkisun to the manager of the petitioner company on 8th of February, 1993. Ext. E-3 is the another letter purported to have been sent by the workmen namely Kilajeet Pal, Shyam Bahadur Gupta, Shiv Lal, Harish Chandra Prajapati, Jagmohan Prajapati, Ramdhari Prajapati and Ramcharan to the Manager of the petitioners.

18. Apart from the above, no other documentary evidence in the shape of appointment letters, attendance card, payment of wages etc. was placed by the respondent workmen to substantiate their claim that they were appointed or employed by the petitioners. In my considered view, on close examination of these documents cumulatively or separately, it is not possible to draw inference of relationship of employer and employee between the parties. The copies of gate passes have been enclosed along with the writ petition. These gate passes do not show that the persons to whom the gate passes were issued were employed or engaged by the petitioners in any manner. On the contrary, they do show that these persons were permitted to enter into the premises of the petitioner and nothing more than that. Heading of these gate passes is "temporary gate passes". In these gate passes, name and address of the person and date of permission with signature of issuing authority are mentioned. The only inference

which can be drawn from them is that the person was permitted to enter the factory premises. In some of the gate passes there appears to be stamp which provides that these gate passes were issued for Vipro Horticulture Services. The case of the petitioner is that the respondent No. 2 namely Sri Bamdeo Misra, Proprietor of M/s. A to Z Services was the work contractor and the petitioner company was principal employer. The petitioner company is duly registered under the Contract Labour (Regulation & Abolition) Act, 1970. The endorsement on the gate passes (for Vipro Horticulture Services) supports the case of the petitioner and negates the respondents' contention. The other documents which have been relied upon by the Industrial Tribunal are the two letters Ext. E-1 and E-3 vide paragraphs 31 to 34 of the award. Indisputably, these letters were written by the workmen to the petitioner company with the averments that they were working with full devotion as casual labourers with the hope that their services will be regularised in due course of time. But their services have been terminated by the "Incharge Sri Bamdeo Misra" without recourse to the legal proceedings in an illegal manner. Ext. E-3 is the another letter wherein also the workmen have stated that the contractor Sri Bamdeo Misra misbehaved with them and used abusive words and prevented them to enter in the factory premises. These letters cannot be pressed in service by the respondent workmen as at the most they are in the nature of self-serving statements. Even otherwise also, there is no whisper that these persons were engaged or employed directly by the petitioner company. If these letters are taken on their face value, at the most they do show that the respondents were employed by the contractor namely Sri Bamdeo Misra, a fact which finds mention therein. The inference, thus, drawn by the Industrial Tribunal on the basis of the above documentary evidence that there was relationship of employer and employee between the parties is perverse and no such inference can possibly be drawn. The other aspect of the case is that the Industrial Tribunal has failed to notice that it was pleaded by the petitioners that they have got a system of making appointment in the petitioner unit detailed in their pleadings. The said procedure prescribes that firstly names will be called from the Employment Exchange. In absence of suitable candidates from the Employment Exchange after taking no objection certificate from it, the vacancy is notified in the newspaper and thereafter appointment letters are issued to selected workmen. A system of recording attendance of the workmen through "computerized attendance recording system" is maintained. Wages of the employees are disbursed by the petitioner company through bank and not directly. This aspect of the case was completely ignored by the Industrial Tribunal and it proceeded to draw adverse inference as one Sri Indrajeet Kumar Sinha who allegedly had interviewed the respondent workmen, was not examined as a witness. He, according to the workmen, used to record the attendance of the workmen in attendance register. The Industrial Tribunal drew an adverse inference for non examination of Sri Indrajeet Sinha. It is not a case of the workmen that Sri Indrajeet Sinha was called by them as a witness but was not produced. The workmen should have examined Sri Indrajeet Sinha as their witness to support the theory of their engagement by Sri Indrajeet

Kumar Sinha. The theory of drawing adverse inference for non production of an evidence, can be pressed into service only on the failure of such person after being called to produce, which is not so here. In any view of the matter, since it has come on record that the petitioner company has got a system of recruitment of employees and recording of their attendance and payment of salary to its employees, no person can be said to be employed or engaged without an appointment letter or payment of salary. When specific case of the petitioner company is that a person is employed only after issuing appointment letter to him and the salary is disbursed through bank, in absence of any such evidence, the inference of relationship of employer and employee by the Industrial Tribunal is wholly perverse and against the material on record. The Tribunal has not cared to examine the evidence of the parties in the light of their pleadings. The Industrial Tribunal has not doubted the method of recruitment. Until and unless the method as set out by the petitioners is doubted or discarded, the finding of the Industrial Tribunal that the respondents were workmen of the petitioner company cannot be allowed to stand. The Court is conscious of the restricted jurisdiction of writ court to enter into the realm of appreciation of evidence but the present case is a case of no evidence.

19. The learned Counsel for the contesting respondents could not show any other evidence in support of the above finding of the Industrial Tribunal. There is no evidence of employment of the contesting respondents by the petitioner company nor any record of payment of salary etc. by the petitioners.

20. Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., a Constitution Bench decision, is an authority for the proposition that where a workman is hired in or in connection with the work of an establishment to produce a given result or the contractor supplies workman for any work of the establishment, unless the contractor is a mere camouflage, the workman cannot be treated as an employee of the principal employer. While applying the above ratio to the facts of the case on hand, it may be noted that the respondent workmen were engaged as gardener through labour contractor, for the purposes of maintaining garden and land scaping. There is no material on record; at least none was placed before the Court that these persons were under the control or supervision of the petitioner or the respondent No. 2 was a mere camouflage. Nor so found by the Tribunal. In para 24 of the written statement (Annexure 13) of the workmen it has been stated that the contractor, respondent No. 2 herein, is not a registered contractor under the Contract Labour (Regulation and Abolition) Act, 1970. Even if it is so, it will not make the respondent workmen as workmen of the petitioner i.e. of the principal employer so held in the case of Steel Authority of India Ltd. (supra).

21. Coming to the last point, the learned Counsel for the petitioners submits that in view of the judgment delivered by Delhi High Court in Eagle Fashions v. Secretary (Labour) and Ors. 1999 (81) FLR 887, the reference made by the State Government was not proper and vitiated. The factum of employment of the

respondents by the petitioner company and that termination itself were in dispute. The Delhi High Court in the above case has held that in such cases the reference with regard to the validity of termination order is bad. Paragraph No. 4 of the aforesaid judgment is reproduced below:

4. When the factum of employment and termination itself were in dispute, the terms of reference could not have been so framed as to presume the employment and its termination and confining the reference merely to adjudication of illegality or unjustness thereof. We are of the opinion that the order of reference has been drawn up without application of mind and hence is vitiated.

22. In view of the above, the reference is held to be bad.

23. The upshot of the above discussions is that the impugned awards cannot be allowed to stand. The State Government was not an appropriate authority to make the reference u/s 4-K of the Industrial Disputes Act. There is no evidence worth the name on record to show that the petitioners were the employers of the contesting respondent workmen. The term of reference is also bad as the factum of relationship of employer and employee between the parties is in dispute.

24. In the result, the writ petition succeeds and is allowed. All the impugned awards are hereby set aside. By way of clarification it is added that any amount paid to the respondents in pursuance of the impugned awards shall not be recoverable from them. But no further amount shall be payable to them. No order as to costs.