
(2017) 04 JH CK 0011
In the Jharkhand High Court
Case No : C.W.J.C. No. 3516 of 2000(R)

Indradeo Pandey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(2)
Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 2

Citation : (2017) 2 AIRJharR 542 : (2017) 2 JBCJ 488

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s Sudarshan Shrivastava and Sunil Kr. Singh, Advocates, for the Petitioner; None, for the Respondents

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.— Heard learned counsel for the petitioner. Though the Respondent Union of India and the Steel Authority of India Limited(SAIL) are also represented through their Counsel but no one has appeared on their behalf.

2. The writ petition is of the year 2000. Petitioner herein is a workman who claims to be engaged as contract labour doing loading and unloading work in the stockyard of SAIL at Bokaro Steel Limited(BSL) for last 15 years or more. He has approached this Court for issuance of writ/order/directions upon the Respondents to immediately abolish the system of Contract Labour of Bokaro Trading Company, who has been engaged in loading and unloading job of the materials in the Stockyard of SAIL for the last 15 years and also absorb the petitioner working there in the regular employment of BSL under SAIL. He has also requested for a detailed inquiry into the nature of work undertaken at the Stockyard for the purpose of determination whether the said work is in the nature of permanent nature of job, which falls under the criteria prescribed under Section 10(2) of the Contract Labour(Regulation and Abolition) Act, 1970 and on

such finding the Respondents are duty bound to abolish the prohibited Contract Labour System in the SAIL. Petitioner also prayed for a direction upon the Respondents to abide by the decision of the Hon'ble Supreme Court on the subject and absorb such Contract Labours in regular employment under SAIL after abolishing the prohibited practise. Consequential relief of arrears of difference of wages have also been sought pursuant to such determination.

3. When the matter was taken up on 14.3.2013, taking note of the submission of the learned counsel for the petitioner, following order was passed in order to have a considered response of the Respondents, Ministry of Labour, Government of India:-

"Counsel for the petitioner vehemently argued that under the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and upon report submitted by the Assistant Labour Commissioner Central and Regional Labour Commissioner Central as also the recommendation contained at Annexure-8 by the Director Training under the office of Chief Labour Commissioner (Central) dated 29th February, 2000, the Ministry of Labour, Government of India is under the statutory obligation to take a decision as to whether prohibition notification under Section 10(1) is required to be issued in respect of the case of these workmen who are claiming to be engaged for perennial nature of work since last 15-20 long years through contractor of the respondent-SAIL.

In order to arrive at a determination of issue raised in the writ application, it is proper that the respondent-Ministry of Labour, Government of India, who is only a party in the instant case, submit their considered response. It appears that earlier time has been granted to the respondent-Union of India for filing their affidavits, but no affidavit has been filed till date on their behalf, though the matter relates to the year 2000.

It is submitted that the name of Mr. Md. Mokhtar Khan, ASGI is not appearing as counsel for the Union of India in the cause list.

Learned counsel for the petitioner is directed to serve a copy of the writ petition along with pleading upon the Mr. Md. Mokhtar Khan, ASGI within a week.

Since the matter relates to the year 2000, list this case after four weeks to enable the respondent-Union of India to file its considered response through affidavit in the instant case by way of one more indulgence.

Let the name of Mr. Md. Mokhtar Khan, ASGI appear in the cause list henceforth as counsel for the Union of India.

Let a copy of this order be handed over to Mr. Md. Mokhtar Khan, ASGI".

4. Counter affidavit has been filed by the Respondent No.1,4 and 5 stating at para 4 thereof that the provisions of Contract Labour(Regulation & Abolition) Act, 1970 and Contract Labour(Regulation & Abolition) Central Rules, 1971 do not

provide a blanket prohibition in engagement of contract labour. The appropriate Government may after consultation with the Central Board or as the case may be, the State Board prohibit by Notification in the official gazette, the employment of Contract labour in any process, operation or other work in any establishment. The decision is to be taken after following the procedure laid down under Section 10(2) of the Act of 1970, which inter alia requires:-

(a) Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) Whether it is of perennial nature, that is to say, it is of sufficient duration, having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) Whether it is sufficient to employ considerable number of whole-time workmen.

5. It is also stated therein that the matter has not been placed before the Advisory Board for arriving at a conclusion whether nature of loading, unloading work being performed under SAIL fulfils the criteria laid down under Section 10(2) of the Act of 1970. The Respondents also stated at para 5 that since the reference is of the year 2000, records were not traceable. However, they accept that jurisdiction of the Public Sector changed from the Central Government to State Government in 2001 after the judgment rendered in the case of Steel Authority of India Limited v. National Union Water Front Workers and others reported in (2001) 7 SCC 1, has now again come under the Central Government, which is the appropriate Government. The applicants were being requested to furnish the requisite information with the relevant documents. Similarly the concerned Establishment was also requested to furnish requisite information with the relevant documents. On receipt of such information and documents, the matter will be placed in the next meeting of the Board. At para 8 of the counter affidavit they have stated that complaints of the Jharkhand Ispat Majdoor Union, TOP More, Jhopri Colony, Bokaro City regarding regularization of contract labour working in Stockyard of SAIL, Maraphari, Bokaro was investigated by the then concerned Assistant Labour Commissioner (Central) / Regional Labour Commissioner (Central), Dhanbad but since the power of conciliation at that time was delegated to the State Government, the then concerned Assistant Labour Commissioner (Central) / Regional Labour Commissioner (Central), Dhanbad submitted a detail report to the Chief Labour Commissioner (Central), New Delhi. Thereafter the Chief Labour Commissioner (Central), New Delhi referred the matter to the Director General, Labour Welfare(DGLW), Ministry of Labour & Employment in the year 2000 for placing the matter before the Central Advisory Contract Labour Board (CACLB), as that was the appropriate statutory forum.

Respondents have again through the averments in the affidavit reiterated their stand that on receipt of requisite information and documents, the matter will be placed in the next meeting of the Board.

6. Learned counsel for the petitioner submits on instructions that no decision has been taken by the Respondent Board. It is stated that in terms of the averments made in the counter affidavit, directions were issued by the Ministry of Labour and Employment through letter dated 12.8.2013 bearing No. S-16014/26/2013-LW to the Regional Labour Commissioner (Central), Dhanbad as also to the petitioner to provide report along with the relevant documents and details in order to enable the CACLB to consider the matter and make its recommendation. Top priority was attached to it being CACLB matter.

7. Learned counsel for the petitioner fairly submits that it is only after a decision is taken by the appropriate Government (Central Government) as per the recommendation of the CACLB under the provisions of the Act of 1970 in a time bound manner, can the petitioner have a right to approach the appropriate forum for his absorption in terms of the SAIL judgment. He has placed reliance upon a judgment rendered by the Hon"ble Supreme Court in the case of Baleshwar Rajbanshi and others v. Board of Trustees for Port Trust of Calcutta and others reported in (2013) 4 SCC 258.

8. Considered the submission of learned counsel for the petitioner in the light of the materials pleaded and also the stand of the Respondent, Ministry of Labour, Government of India as brought on record through their counter affidavit. The stand of the Ministry of Labour, Government of India obviously conveys the exercise required to be undertaken as per the procedure prescribed under the Act of 1970 and the Rules made there under in the matter of issuance of a prohibition notification under Section 10(2) of the Act of 1970 in such matters. The grievance of petitioner has been raised in the year 2000 itself through the present writ petition but on account of inexplicable reasons no such exercise seems to have been concluded as yet. Whether petitioner or similarly situated person can raise the claim for absorption in terms of the provisions of the Act of 1970 or not, would depend only on issuance of the notification of prohibition in the manner prescribed after satisfaction of the recommendatory body i.e. CACLB on investigation of the foundational facts germane to it. However, since the said exercise remains inconclusive for such a long time, aggrieved person like petitioner may not have any redress in the eye of law.

9. In the background facts and circumstances noted herein above, it is therefore deemed appropriate to direct Ministry of Labour, Government of India to undertake and conclude the exercise as proposed by them for the purposes of taking a decision in terms of the provisions of Section 10(2) of the Act of 1970 as expeditiously as possible within a period of 16 weeks from the date of receipt of copy of this order.

10. It appears that the requisite information, report etc. have been called for by

the Ministry of Labour from petitioner as well as concerned Authorities. Petitioner would cooperate in the matter and the Ministry of Labour, Government of India would ensure that all necessary information be placed before CACLB within time for taking a final decision in the matter by the appropriate Government i.e. the Ministry of Labour under the Government of India.

11. Accordingly, the writ petition stands disposed of. Pending I.A. is also closed.