
(2002) 01 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 4506 of 1989

Jaya Nand and Others

APPELLANT

Vs

Hindustan Machine Tools Ltd., Pinjore and Another

RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Factories Act, 1948 — Section 46
Industrial Disputes Act, 1947 — Section 10

Citation : (2002) 01 P&H CK 0014

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : R.C. Dimri, for the Appellant; R.K. Chhibbar, Senior Advocate, Anand Chhibbar, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Whether the persons working in a canteen of H.M.T. factory for the last several years can be considered the employees of the H.M.T. itself, is a point for determination in the present writ petition.

2. The petitioners are the employees who work in the canteen run in the premises of Hindustan Machine Tools, Pinjore through a contractor. They are working for several years yet their services are not being regularised by the H.M.T. on the plea that they are not its employees. Rather they are the employees of the contractor. Thus, the petitioners have filed the present writ petition against the respondents seeking mandate that directions be given to the respondents to regularise their services in the H.M.T. canteen allegedly run by Hindustan Machine Tools Ltd. for the last several years and they should be considered the employees of the said company. The case set up by the petitioners is that Hindustan Machine Tools is a government company controlled by the Government of India. They are the employees working in the canteen of the H.M.T. premises under the statutory provisions of Industrial Disputes Rules and the Factories Act and this canteen is recognised by respondent No. 1.

Respondent No. 1 runs the canteen for providing tea and means to its employees numbering about 3000 to 4000. The petitioners are working regularly without any break. The modus operandi of the management is to give the contract to some contractors for the purpose of catering tea, serving the meals at subsidised rates and for that purpose contractors are appointed. However, the workers in the canteen remain the same. The principal employer is H.M.T. management but the control is of the contractor. Even otherwise under the statute i.e. Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is not the contractor but the establishment of the H.M.T. The management changes the contractor either after one year or after two years as per terms of the contract and new contractor takes over the work and starts catering the needs of the H.M.T. employees through the petitioners.

3. The Chairman of the Canteen Committee is the Personnel Chief of the H.M.T. whereas, its Secretary is the Labour Welfare Officer. The H.M.T. employees supervises all the functioning of the canteen so that it may run in a proper manner. H.M.T. respondent No. 1, is also governed by the provisions of Section 46 of the Factories Act for establishment of statutory canteen and it makes obligatory on the occupier of the factory to provide a canteen where more than 250 workers are employed. Thus, the petitioners alleged that they are not only the employees of the HMT under the Factories Act, but are,even otherwise deemed to be employees of the HMT on their pay rolls. The canteen is run by subsidised rates and management also contributes its money so that the canteen may run smoothly. Management provides utensils, equipments, furniture and,there-fore, for all intents and purposes, respondent No.1 is the principal employer of the petitioners and not the contractor who runs the canteen. In order to appoint licencees/con-tractors HMT invites applications and tenders. It has the control over the canteen and its employees. It fixes the rate of commodities to be supplied in the canteen. With this background, the petitioners have made a prayer that they should be considered as the employees of respondent No.1 and since they are working for the last several years, their services ought to have been regularised by the management of the HMT.

4. Notice of the writ petition was given to the respondents. Only respondent No. 3 has given the contest to this writ petition. According to this respondent, earlier the different contractors has been possessing the licence u/s 7 of the Contract Labour (Regulation and Abolition) Act, 1970. Now respondent No.1 holds valid certificate of Registration u/s 7 of the Contract Labour (Regulation and Abolition) Act which was issued to it on 12.6.1989. relying upon various agreement executed between respondent No. 1 and the contractor it was pleaded by respondent No.1 that petitioners are the employees of the licensed contractors and were not employees of respondent No. 1. It has no liability of any kind whatsoever in regard to the petitioners as the petitioners were and are engaged by the licensed contractor. The petitioners could not become the workers of respondent No. 1, It was pleaded by respondent No.1 that the present writ petition is not maintainable as the petitioners should have first availed the

alternate remedy under the Industrial Disputes Act by making a reference u/s 10 of the said Act.

5. On merits, the stand of respondent No.1 is simple that the petitioners are not its employees. They were never employed by them. They are the employees of the contractor who had a licence and in these circumstances, the petitioners cannot ask for a declaration or mandate as stated in the earlier portion of this judgment.

6. I have heard Shri R.C. Dimri, teamed counsel appearing on behalf of the petitioners and Shri R.K. Chhibbar, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of this case.

7. The learned counsel for the petitioners vehemently submitted that this Court has the jurisdiction and the competency to lift the veil in order to adjudicate whether the petitioners are in fact the employees of respondent No.1 or that of the contractor. Supplementing his submission Mr. Dimri, submitted that the canteen running in the premises of HMT, Pinjore is a statutory one in view of Section 46 of the Factories Act. The petitioners are governed under the E.S.I. Scheme. They are contributing money to the said scheme. The control of the factory premises is with the management. The canteen is being run on subsidiary rates and it can be run only in this manner if management contributes from its own monetary resources. Further the working of the canteen is supervised by the staff of the factory itself. Therefore, if the veil is lifted in the right perspective there is no difficulty in holding that the petitioners are the employees of respondent No.1 and not that of the contractor. It was also pleaded by the counsel for the petitioners that the HMT obtained the licence for engaging contract labour on 17.10.1988 but it started employing the contract labour in the year 1986. In the year 1986, respondent No.1 had no licence, therefore, the contract labourers are to be treated as the employees of respondent No.1. Learned counsel for the petitioners supplemented his argument by some case law reported as *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], ; *VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, *Indian Petrochemicals Corporation Ltd. and Anr. v. Shramik Sena and Ors.*.

8. On the contrary, learned counsel appearing on behalf of the respondents submitted that the petitioners are the employees of the contractor who alone had the control over them as submitted by the petitioners in the writ petition. Under the statute i.e. Factories Act an obligation has been cast upon respondent No. 1 to provide a canteen for the facility of its workers. The petitioners were employed and engaged by a contractor who held a licence. Respondent No. 1 has no control in the selection or appointment of the petitioners nor at any point of time the management has given salary to the petitioners. Therefore, respondent No.1 cannot be held to be the employer of the petitioners by any stretch of imagination. Some case law was also cited by the learned counsel for the respondents which I will refer in the later portion of the judgment but at this

stage I may make a mention that after considering the rival contentions of the parties, this Court is of the opinion that the petitioners have no case and the writ petition is liable to be dismissed.

9. In *VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, the Hon'ble Supreme Court held that the workmen of a statutory canteen would be the workmen of an establishment for the purposes of the Factories Act and not for any other purposes. Some tests were also laid by the Hon'ble Supreme Court such as (i) whether the canteen has been there since the inception of the appellants factory (ii) whether the workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen (iii) whether the premises, furniture, fixture, fuel, electricity, utensils etc. have been provided by the management; (iv) Whether the wages of the canteen workers have to be reimbursed by the management: (v) whether the supervision and control of the canteen is exercised by the management through its various officers as can be seen from the various clauses of the contract between the management and the contractor; (vi) whether the contractor is nothing but an agent or a Manager of the management who works completely under the supervision, control and directions of the management and (vii) whether the workmen have the protection of continuous employment in the establishment.

10. In the present case the above conditions are not fulfilled so as to hold that the petitioners are the workmen of respondent No.1 for the purpose of Factories Act because the wages of the petitioners are not being reimbursed by respondent No.1. It has not been shown at all that respondent No.1 was ever involved at the time of the initial engagement of the petitioners by the contractor. If a facility is being provided to the employees of the factory by the management by virtue of the provision of Section 46 of the Factories Act, through a contractor, who hires and engages the labour for running the canteen, such labourers or workers cannot be held to be the employees of the management. The position has been further enshrined by the Hon'ble Supreme Court in *State Bank of India and Others Vs. State Bank of India Canteen Employees' Union (Bengal Circle) and Others*, and the answer was again given in the negative by holding that such employees of the canteen do not get the status of the employees of the management. Further reliance can be placed on *JT 1999 (5) SC 340 Indian Petrochemical Corporation Ltd. and another v. Shramik Sena*, in para No. 17 it has been stated as under:-

"The question however is: does this status of a workman under the Factories Act confine the relationship of the employer and the employees to the requirements of the Factories Act alone or does this definition extend for all other purposes which include continuity of service, seniority, pension and other benefits which a regular employee enjoys. The Factories Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits etc. These are governed by other statutes, rules contracts or policies.

Therefore, the workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purposes cannot be accepted."

11. The long continuation of the petitioners serving as serving boys etc. may clothe them with the status of workmen for the purpose of Factories Act but they do not become the employees or workmen of the management as alleged by the petitioners in the writ petition. In para No. 22 of this very judgment (J.T. 1999(5) S.C. 340) the Hon'ble Supreme Court has clarified the position by stating as follows:-

"If the argument of the workmen in regard to the interpretation of Raha's case is to be accepted then the same would run counter to the law laid down by a larger Bench of this Court in Khan's case (supra). On this point similar is the view of another three-Judge Bench of this Court in the case of Employers in relation to the Management of Reserve Bank of India v. Workmen 1996 (3) SC 267 Therefore, following the judgment of this Court in the cases of Khan and RBI (supra) we hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes".

12. Faced with this difficulty, learned counsel for the petitioners relied upon G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, and it was argued that in such University which was a residential one the inmates of the hostel were not permitted to have food from outside. Cafeteria service was not only a welfare service but it was a statutory requirement. The workmen of cafeteria were employed by the University and, therefore, they were entitled to be regularised. On the face of it, it is distinguishable for two reasons firstly, that the employment of the petitioners is not by the management and it is not obligatory upon the factory workers of respondent No. 1 to have their food or snack only from the canteen. In the present case, there is amenity of canteen though statutory provided for the benefit of the workers of the factory so that they may refresh themselves if required with snacks etc. In order to run the canteen a job has been assigned to a contractor who employs certain persons in order to give the facility of canteen etc. to the workers of the factory. In such a situation, it cannot be said that the workers as employed by the contractor are the workmen or the employees of the factory. Even if some contribution is given by the management for providing eatable commodities that factor alone itself would not be enough for me to hold that the petitioners were employed or they should be considered in deemed employment of respondent No. 1. There is no dispute with the proposition of law that the High Court or the law Courts can lift the veil in order to determine the real relationship of employer or employee but even after lifting the veil this Court is not in a position to give any relief to the petitioners.

13. After examining the totality of the pleadings of this case and the documents attached by the parties. I am of opinion that petitioners cannot get a declaration

or man date as mentioned earlier in this judgment. There is no merit in this writ petition and the same is hereby dismissed.