
(2018) 12 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) 3669 Of 2014

Khargeswar Narzary And 17 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 12 GAU CK 0011

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B. K. Bhattacharjee, P. Bhowmick

Final Decision : Dismissed

Judgement

1. An award dated 03.06.2014, passed by the learned Labour Court, Guwahati in Reference Case No. 7/2009, is the subject matter of challenge in this writ petition. By the said award, the reference made by the Government vide Notification dated 26.05.2009, was answered in favour of the Management of the Bongaigaon Thermal Power Station and against the workmen.

2. Heard Mr. B. K. Bhattacharjee, learned counsel assisted by Ms. Aseema Chutia, learned counsel for the petitioners as well as Shri P. Bhowmick, learned counsel for the respondent Management.

A brief narration of the facts of the case is required to be given as hereunder.

3. Vide Notification dated 26.05.2009, an industrial dispute was referred by the Government of Assam to the learned Labour Court, Guwahati which was registered as Reference Case No. 7/2009. The terms of the reference is quoted herein below;-

Whether Sarbasri Sunil Basumatary, Khargeswar Narzary, Milon Basumatray, Lakshmi Kt. Basumatary, Aswini Kr. Roy, Nripen Barman, Suresh Deb Nath, Lokendra Ch. Boro, Rabi Ram Boro, Purna Nath, Najin Ram Rabha, Simbu

Barman, Budhiram Basumatary, Harichara Roy, Ramesh Nath, Uamesh Kalita, Pabira Kr. Rabha, Dhruva Kr. Nath are legally entitled to reinstatement in their service in Bongaigaon Thermal Power Station, at Salakati or not?

4. On receipt of notice, the contesting parties had filed their respective written statements. So far the evidence is concerned, the management side adduced evidence through 8 Nos. of witnesses whereas the workmen had adduced evidence through 6 Nos. of witnesses. At the very preliminary stage, the management had filed a writ petition before this Court being WP(C) No. 4620/2009 challenging the reference as well as the proceeding on the point of res judicata. This Court vide order dated 19.05.2018, had remanded the matter to the learned Labour Court to decide on the question of res judicata. Subsequent thereupon, the learned Labour Court had passed an order dated 08.09.2010, whereby a preliminary award was published holding that the reference was hit by the principles of res judicata.

5. Aggrieved by the preliminary award, the workmen had approached this Court by filing a writ petition being WP(C) No. 6308/2010. The aforesaid writ petition was finally disposed of vide order dated 31.10.2013, whereby the writ petition was allowed by setting aside the preliminary award and the matter was remanded to the learned Labour Court to decide the issue on merits.

6. On such remand, the proceeding before the learned Labour court continued culminating into the award dated 03.06.2014, which is the subject matter of challenge in this writ petition. As has been stated above, by the aforesaid award which has been impugned, the reference has been answered in favour of the management (respondent) and against the workmen (petitioner).

7. Mr. Bhattacharjee, learned counsel appearing for the petitioners/workmen strenuously argues that the award in question is perverse. Material and relevant factors have not been considered whereas irrelevant and extraneous materials are taken into account while arriving at the impugned conclusion. It is the case projected by the petitioners that the pleadings as well as the evidence of the workmen have been overlooked, the arguments not even considered and finally the learned Labour Court failed to apply its judicious mind while adjudicating the dispute at hand.

8. Mr. Bhattacharjee, learned counsel for the petitioners submits that it was the categorical stand of the petitioners that they were initially issued appointment letters on the strength of which they have been continuing in their services as Muster Roll Workers. It is the case of the petitioners that the appointment letters were recalled and I.D. cards were issued instead. Since, such appointment letters were recalled, no copies thereof could be retained which could have been produced in the learned Labour Court. However, the I.D. cards issued to the petitioners were annexed to the written statement. It has been pointed out by Mr. Bhattacharjee that in the written statement of the Management, there is no denial regarding the long period of service rendered by the petitioners.

9. Mr. Bhattacharjee, learned counsel for the petitioners submits that in a proceeding of industrial disputes before the learned Labour Court there is no strict application of the Evidence Act and, therefore, the fact that no document was exhibited by the witnesses appearing from the side of the workmen should not come into the way of doing substantial justice. On the point that nothing was stated in any of the evidence in chief by the workmen that they were initially issued appointment letters which were later taken back, the learned counsel submits that the same was there in the evidence.

10. Mr. Bhattacharjee, learned counsel learned counsel for the petitioners referring to a judgment dated 06.03.2007, passed by this Court in WP(C) No. 4573/2006 submits that the same was a similar case wherein an award dated 31.03.2006, passed under similar facts by which re-instatement was allowed with all back wages was upheld by this Court. The learned counsel has submitted that the petitioners were directly employed by the respondent corporation and were not contract labourers. The Management had failed to produce a single document to bring home their point that the petitioners in question were contract labourers and, therefore, the impugned award is liable to be interfered with.

11. Referring to the certificates produced along with the written statement before the learned Labour Court, Mr. Bhattacharjee points out that there is no mention that the petitioner's services were that of contract labour. He further contends that since the Management had raised the defence of the petitioner being contract labour, they were under an obligation to produce labour license of the contractors which were not done. He further submits that the issue in hand is covered by the judgment dated 06.03.2007 of this Court passed in WP(C) No. 4573/2006 involving a similar matter and the award which was passed in favour of the workmen was upheld by this Court by dismissing the writ petition filed by the Management.

12. Mr. Bhattacharjee, learned counsel for the petitioners submits that it has come in evidence that the workmen were provided with officially quarters and that most of the management witnesses who were introduced as contractors supplying the petitioners as workmen were actually cultivators and one is even a house wife. It is contended that the salaries were directly paid by the Management and there was deduction of CPF by the Management.

Mr. Bhattacharjee, learned counsel further relies upon the following decisions to support his arguments;-

I. AIR 1963 SC 404 (State of Orissa and Anr. -Vs- Murlidhar Jena)

II. (1978) 4 SCC 257 (Hussainbhai, Calicut -Vs- The Alath Factory Thezhilali Union, Kozhikode and Ors.)

III. (1999) 3 SCC 601 (Secretary, H.S.E.B. -Vs- Suresh and Ors.)

IV. (2001) 1 SCC 298 (VST Industries Ltd. -Vs- VST Industries Workers' Union and Anr.)

V. (2001) 7 SCC 1 (Steel Authority of India Ltd. and Ors. -Vs-National Union Waterfront Workers and Ors.)

VI. (2003) 6 SCC 528 (Bharat Heavy Electricals Ltd. -Vs- State of U.P. and Ors.)

VII. (2011) 1 SCC 635 (Nagpur Cotton Mills, Rajnandgaon -Vs-Bharat Lal and Anr.)

VIII. 1993 Supp. (4) SCC 46 (Naseem Bano -Vs- State of U.P. and Ors.)

13. Mr. Bhattacharjee, learned counsel for the petitioners in support of his submission relies upon in the case of State Of Orissa & Anr vs Murlidhar Jena (supra) reported in 1963 AIR (SC) 404, where it has been laid down that the matters adjudicated by Tribunals, strict application of the Evidence Act is not mandated.

The other case laws cited are with regard to obligations of the principal employer under the Contract Labour (Regulation and Abolition Act) 1970. The case of Nasem Bano has been cited contending that certain averments have not been converted and, therefore, should be presumed to be admitted.

14. Shri P. Bhowmick, learned counsel for the respondent corporation, on the other hand, submits that mere annexing documents without even properly marking the same cannot be treated to be admissible as evidence. Shri Bhowmick submits that along with the written statement, certain copies of certificates and I.D. cards were annexed. However, mere annexing cannot dispense with the rigours of proving the same as per law.

15. Shri Bhowmick, learned counsel fairly submits that though the provisions of the Evidence Act may not be strictly applicable in a reference case before the learned Labour Court, certain semblance of the provisions of the said Act are required to be followed.

16. Shri Bhowmick, learned counsel for the respondents submits that in the instant case, there is no employer and employee relationship between the parties and all the writ petitioners were contract labourers and on the closure of the aforesaid power station, the services of the petitioners which was under different contractors had to be discontinued. Supporting the award, Shir Bhowmick submits that the award has taken all the relevant materials in the consideration and based upon the law laid down by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Ors., -Vs-Uma Devi (3) reported in (2006) 4 SCC 1, the reference has been rightly answered in favour of the management.

17. As regards the requirement of proving the documents, Shri Bhowmick, learned counsel relies upon the decisions of the Hon'ble Supreme Court reported in the case of M/s Bareilly Electricity Supply Com. Ltd. -Vs- The Workmen & Ors., report in (1971) 2 SCC 617. In that case pertaining to an industrial dispute, the Hon'ble Supreme Court had laid down that in labour matters, issues are seriously contested and, therefore, the facts are required to be established and proved. It

has further been held that mere production of document may not amount to proof of the same. It has further been held that if a letter or any other documents are produced to establish a fact, the writer must be produced or his affidavit in respect thereof filed so that an opportunity is afforded to the adverse party who might challenge this fact. The said principle is in consonance with the principle of natural justice and also as per procedure of Order XXIX of the Code of Civil Procedure, 1908 and the Evidence Act. It has further been held that it is inconceivable that a Tribunal can base its award of copies of documents when the originals are not produced.

18. Shri Bhowmick, learned counsel for the respondents further submits that the rigours are of the Evidence Act or the Code of Civil Procedure, 1908 so far as proving of fact or document cannot be dispensed of in a proceeding before a labour Court which has all the trappings of a Court. In this connection, he relies upon a judgment of the Hon'ble Supreme Court in the case of Shankar Chakravarti -Vs- Britannia Biscuit Com. Ltd. reported in (1979) 3 SCC 371.

19. To buttress his submission that proper evidence is required to be adduced in the manner prescribed, Shri Bhowmick relies upon a decision of the Hon'ble Supreme Court in the case of Neeta Kaplish -Vs- Presiding Officer, Labour Court & Ors., reported in (1991) 1 SCC 517. Meeting the argument made on behalf of the petitioner that Umadevi case (supra) was not applicable to proceeding under the industrial disputes Act, Mr. Bhowmick relies upon the decision in the case of U.P. Power Corporation Ltd., -Vs- Bijli Mazdoor Sangh & Ors., reported in (2007) 5 SCC 755 wherein in paragraph-5, it has laid down that the ratio in Umadevi would also be applicable in cases concerning industrial dispute.

20. Shri Bhowmick, learned counsel has contended that it is consistent stand of the management that the petitioners were never the employees of the management and were engaged through different contractors who were also produced as witnesses. In fact, in the pleadings, the names of the different contractors qua the different petitioners have been given in a tabular form. Since, the petitioners were appointed through contractors, the reference has been rightly answered in favour of the management. As regards the earlier decision of this Court passed in WP(C) No. 4573/2006 dated 06.03.2007, Shri Bhowmick submits that the said decision is clearly distinguishable on facts of the case. It may be mentioned that the said writ petition was filed by the management against an award dated 31.03.2006, by which reinstatement was directed for the workmen with all back wages. The stand of the management in that case was that the 37 Nos. of the workmen were contract labourers and the said stand was negated by the learned Tribunal and the said decision was upheld by this Court while dismissing the aforesaid writ petition.

21. Mr. Bhattacharjee replying to the contentions of Shri Bhowmick submits that the case in hand is not of regularisation of the services of the petitioners but of re-instatement and, therefore, the entire argument of the respondent is fallacious and in this connection, he Cites a reported case of the Hon'ble

Supreme Court, namely, Shambhu Nath Goyal -Vs- Bank of Baroda & Ors., reported in 1984 (1) SCR 85

22. Mr. Bhattacharjee, learned counsel for the petitioners submits that it has been consistently held and accepted that the strict rules of evidence are not applicable to proceeding before the learned Labour Court and labour Court/Tribunals and rules of natural justice are only required to be observed. As stated above in support of the said submission, Mr. Bhattacharjee, relies upon in the case of State of Orissa & Anr., -Vs-Murlidhar Jena (supra). However, on examination of the same it is found that the case relates to Administrative Tribunals wherein the Hon'ble Supreme Court has held that Tribunals are not bound by clear Rules. The learned counsel further submits that due to the impugned action of the Management grave prejudice have been suffered by the petitioners.

23. The rival contentions have been considered. While taking a decision in this matter, this Court is reminded of the fact that this Court in exercise of powers under Article 226 of the Constitution of India is only examining the legality and validity of an award passed by the learned Labour Court under Industrial Disputes Act which is the primary authority. Therefore, the duty of this Court is to see whether the findings arrived at by the learned Labour Court was on the basis of the materials before it or not. There is little scope for improvement of a case before this Court by either of the parties.

24. A writ Court exercising the power of under Article 226 of the Constitution of India would generally refrain from interfering with decision of Tribunals or Courts unless such decision is palpably unreasonable, patently erroneous or ex-facie arbitrarily. Interference may be called for when the findings are perverse qua materials before the Tribunal. In other words, when the findings are based on extraneous and irrelevant materials and the relevant factors have been ignored or that the findings arrived at are such that no reasonable person with proper application of mind could have been reached such findings. The writ Court, in an appropriate case may examine the decision making process and not the merits of the decision.

25. In the instant case, argument of the learned counsel for the petitioners is not consistent with either the pleadings or evidence led before the learned Tribunal. As has been held earlier there is very little scope to improve a case in this Court in a writ petition which has been filed against an award passed by the Tribunal as the primary authority in exercise of powers vested by law.

26. Though this Court may hold that the strict rigours of the Evidence Act may not be applicable to proceedings under the Industrial Tribunal, certain semblance of the procedure has to be followed. It is seen that matters before the Industrial Tribunals are contentious matters where both sides are represented by lawyers and, therefore, it would be difficult to accept the proposition advanced by the learned counsel for the petitioner that the requirements of proof should be totally

dispensed with.

27. In the instant case, it is seen that the workmen did not prove a single document. As regards the foundation of the case that they were appointed by the management by issuing appointment letters, even accepting the plea that such appointment letters were recalled, it is failed to be understood as to what prevented the workmen to produce at least one such appointment letters. Issue of I.D. cards may be for many others reason and cannot be a conclusive evidence of the petitioners being under direct employment of the management. No documents in original were produced before the learned Labour Court.

28. Further, the contention of the workmen cannot be sustained that the petitioners workmen were contract labourers under different contractors in absence of any pleadings or evidence adduced regarding the obligation the Management being a principle employer and it subsequent obligation under Contract Labour (Regulation and Abolition Act) 1970.

29. It is a settled principle of law that a party to a he has to stand on his own footing and has to prove his case. In the instant case, the said obligation seems not to have been discharged by the petitioners before the learned Labour Court. The contention of the petitioners that the Standing Orders of the management was not followed perhaps will not be available to the petitioners at this stage as the said plea was not taken before the learned Labour Court.

30. In view of the above discussions and taking into consideration the law holding the field, I find that the writ petition is devoid of any merits and accordingly the same is dismissed. There would be no order as to cost.