
(2018) 03 MP CK 0026
In the Madhya Pradesh High Court
Case No : W.P.(S) NO.1083 OF 2004

Kirloskar Brother Ltd.

APPELLANT

Vs

Ramcharan And Others

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13), 2(13)(ii), 14, 31(3), 61, 62

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (2018) 03 MP CK 0026

Hon'ble Judges : ROHIT ARYA, J

Bench : Single Bench

Advocate : G.S. Patwardhan, Rahul Seth

Final Decision : Dismissed

Judgement

Petitioner-establishment has filed this petition under Article 227 of the Constitution of India, taking exception to the order of the Industrial Court dated

5.2.2004 passed in Appeal No.289/MPJR/02, setting aside the order dated 14.3.2002 passed in case No.25/MPJR/97 by Labour Court, Dewas and

granting reinstatement to the respondents-workmen with a finding that there was employeremployee relationship between petitioner and respondents

and they were terminated from service otherwise than as a punishment inflicted by way of disciplinary action tantamounting to illegal retrenchment for

want of payment of retrenchment compensation.

2. The respondents filed an application under Sections 31(3) read with Section 61/62 of the M.P. Industrial Relations Act, 1960 (for short â??MPJR

Actâ?) in the Labour Court, Dewas inter alia contending that for the last three years, they were working in the petitioner-establishment under the

supervision of one Baba Thakur and after completion of service for more than six months continuously, they attained the status of permanent worker

in the establishment. They have had unblemished service record. On account of their satisfactory services, petitioner-establishment had deducted P.F.,

and ESI contribution and deposited the amount in their respective accounts with the authorities concerned. To their surprise, by an oral order dated

7.10.1996 through Supervisor Baba Thakur, the services of respondents were terminated w.e.f. 8.10.1996. The respondents-workmen were not

allowed to enter the premises and since then, new appointments have been made in their places.

3. Petitioner-establishment filed its reply denying the relationship of employer and employee with the respondents; instead, submitted that though they

worked in the petitioner-establishment but as contractual employees of Contractor Baba Thakur. However, it has been admitted that there was P.F.

and ESI deduction by the petitioner-establishment in respect of respondents-workmen.

4. Each of the respondent-workman led evidence and described the post and nature of duties of perennial nature performed by them for the last three

years in the establishment under the supervision of Baba Thakur. And, by an oral order dated 7.10.1996, their services were terminated. The

witnesses have withstood in their cross-examination.

5. Petitioner-establishment led evidence of one Rammohan Acharya, Manager (HR). He deposed that the respondents-workmen were not appointed

by the petitioner. They were engaged by Baba Thakur. As such, there was no employer-employee relationship. Baba Thakur is a registered

contractor having licence. The quotation given by Baba Thakur is Ex.D/1 and tender of engagement is Ex.D/2. He also referred to many more

documents relating to Baba Thakur styling himself as labour contractor and engagement by the petitioner-establishment. In his cross-examination, this

witness has admitted that except Ex.D/21 allegedly payment sheet prepared by Baba Thakur, in no other documents, name of the respondents have

appeared to deny that they were employees of the petitioner-establishment. For a ready reference, recitals of cross-examination of Rammohan

Acharya is quoted below :

“;g lgh gS fd Mh@1 esa izkFkhZ ckc n dksbZ tkudkjh ugha gA ;g lgh gS fd

Mh@2 ls iz-Mh@10 rd esa izkFkhZx.k ds uke dk mYYks[k ugha

gS] Lor% dgk ;s vuqca/k gS blfy;s uke dh vko';drk ugha gSA iz-Mh@11 esa izFkei`""B esa ckck Bkdqj ds deZpkjh gksus dk mYys[k ugha

gSA iz-Mh@12 esa deZpkfj;ksa ds ckjs esa mYys[k ugha gSA iz-Mh@13 esa izkFkhZx.k ds ckc n mYys[k ugha fd ;s ckck Bkdqj ds ,EiykbZ

gS ,oa Ckkck Bkdqj us budk ih-,Q- dk iSlk ugha Hkjk gSA Lor% dgk fd Hkfo""; fuf/k fujh{k d }kjk tks fujh{k.k Vhi nh xbZ og gktjh i=d o osru

i=d ds fujh{k d ds ckn gh fn;k x;k gSA ;g dguk lgh gS fd izMh@13 esa , ls , ds e/; mYysf[kr fd;k x;k ml ckc n dksbZ nLrkost izdj.k esa is'k

ugh a gS og Bsdsnkj ds ikl gSA ;g lgh gS fd iz-Mh@14 yxk;r Mh@17 esa izkFkhZx.kksa dk mYys[k ugha fd;k x;k gSA ckck Bkdqj

dkUVsÂ^aDVIZ QeZ dk uke gSA mldk Bsdsnkj dk uke fgeka'kq jkBkSM gSA izMh@19 dk i= izkFkhZx.k ls lacaf/kr ugha gSA iz-Mh@20 esa

Hkh ,oa layXu nLrkost eas Hkh izkFkhZx.k ds uke dk mYys[k ugha gSA ;g dguk lgh gS fd Mh@21 ds vykok vU; dksbZ osru i=d ckck Bkdqj

ds deZpkfj;ksa ckc n izdj.k esa is'k ugha gSA ;g lgh gS fd Mh@22 cksul forj.k eas ckck Bkdqj } kjk forj.k fd;k ,slk mYys[k ugha gS] Lor%

dgk Mh@22 esa , ls , ds e/; daiuh ds vFkjkbZt ijlZu ds lkeus Hkqxrku fd;k ,slk glrk{kj o lhy gSA Mh@23 eas izkFkhZx.kksa ds uke dk

mYys[k ugha gSA Mh@24 esa ckck Bkdqj dk dkUVsÂ^aDV lekIr gksus dh rkjh[k fy[kh gS blesa Hkh izkFkhZx.kksa dk uke ugha gSA ;g lgh

gS fd Mh@25 o Mh@26 esa Hkh izkFkhZx.kksa ds uke dk mYys[k ugha gS] uk gh izkFkhZx.kksa ds uke dh lwph i=d ds lkFk is'k gSA ;g

dguk xyr gS fd izkFkhZx.k IykaV esa dke djrs Fks ;g Hkh xyr gS fd izkFkhZx.k lQkbZ dk dke ugha djrs FksA ;g xyr gS fd ckck Bkdqj gekjs

;gka lqijokbZtj ds :i esa dk;Zjr Fkka ;g lgh gS fd izkFkhZx.kksa dks ckck Bkdqj } kjk Hkqxrku djus ckc n tks fcy is'k fd;k og izdj.k esa is'k ugha

gSA ;g xyr gS fd izkFkhZx.k foi{k dza0&1 dk ,EykbZ FksA^^

(Emphasis supplied)

6. The Labour Court while analyzing the evidence placed on record, though referred to the documents filed by the petitioner/establishment, but did not examine the contents thereof and was swayed with the form of the document andÂ itÂ recorded a finding that the respondents-workmen were contractual employees; hence, are not entitled for reinstatement.

7. The Industrial Court upon critical evaluation of the evidence on record, has

reached to the conclusion that services of the respondents have been terminated without following the due process of law and found the termination bad. Therefore, while setting aside the order passed by Labour Court, held the respondents entitled for reinstatement. The Industrial Court has also referred to the definition of 'employee' and 'employer' as per Section 2(13) and (14) of the MPR Act in support of its conclusion, wherein it is contemplated that "employee" shall include a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause 14. And, Section 2(14)(e) contemplates that "employer" includes where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking; to justify that the respondents were the employees of the petitioner-establishment as for the purposes of said definition, the aforesaid provisions are applicable in view of Clause 3(d) of the Standard Standing Orders (SSOs) annexed to the M.P. Industrial Employment (Standing Orders) Rules, 1963. The Industrial Court also referred to the judgments in *State of Bombay vs The Maharashtra Sugar Mills Ltd.* AIR 1951 Bombay 68 and *Basti Sugar Mills Ltd. v. Ram Ujagar* AIR 1964 SC 355 for reaching the aforesaid conclusion.

8. Learned counsel for the petitioner while criticizing the order of Industrial Court contends that for want of notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 by the appropriate Government prohibiting employment of contract labour, engagement of the worker through contractor to perform the work in the petitioner-establishment could not have been held to be illegal and workers so employed cannot be treated to be employees of the petitioner-establishment. Relying upon the definition of Section 2(13) (iv) of 1960 Act, learned counsel has placed reliance on the decision in *National Thermal Power Corporation vs Badri Singh Thakur* (2008) 9 SCC 377.

9. Heard.

10. The respondents-workmen filed an application under Section 31(3) read with Section 61/62 of 1960 Act, seeking reinstatement as having worked for more than three years on permanent basis in the petitioner-establishment

performing duties of perennial nature on effective control of petitioner-establishment and under the supervision of Supervisor Baba Thakur.

11. Admittedly, petitioner-establishment has deposited its contribution towards P.F. and ESI on behalf of the respondents/workmen with the concerned authorities. As a matter of fact, the petitioner-establishment does not dispute the factum of engagement of respondents-workmen for doing the duties in the petitioner-establishment but sought to dispute the relationship between the employer and employee between them under the pretext that they were contractual employees.

12. The proposition of law laid down by the Supreme Court relied on by the petitioner in Badri Singh Thakur (supra) though is beyond any cavil of doubt, but the same is found to be distinguishable on facts inasmuch as in the said case, the respondents directly approached a Division Bench of this Court challenging the termination with the contention that they were employees of principal employer and not of the contractor and this Court had recorded a finding in that behalf. The Supreme Court observed that the aforesaid aspect requires adjudication and this Court could not have reached the conclusion in its extraordinary powers under Article 226/227 of the Constitution of India. Besides, on law, the Supreme Court held that engagement of the contract labour is not prohibited unless a notification under Section 10 of 1970 Act has been issued by the appropriate Government.

13. This Court has carefully gone through the evidence led by the petitioner as well as by respondents-workmen. The respondents have proved the fact that they worked on different posts for more than three years in the petitioner-establishment without any break with P.F. and ESI deduction by the establishment. The sole petitioner's witness namely; Rammohan Acharya though tried to justify the alleged engagement of the workmen by the contractor Babu Thakur referring to several documents but, in his cross-examination, he fairly conceded that except Ex.D/21, in no other document, names of respondents/workmen were mentioned in the context of engagement of contractual labour. The aforesaid observations are reinforced with the deposition of the petitioner's witness quoted above. As such, the denial of claims of the workmen by the petitioner/establishment are without substance and based on no evidence. The Labour Court merely referring to the documents filed but, without reading the recitals thereof carefully,

proceeded to negate the claim of the respondents-workmen. In these circumstances, the findings of Industrial Court about the factum of employment of respondents-workmen in the establishment cannot be faulted with. Therefore, the order of reinstatement though without backwages is found to be

well within its jurisdiction and impregnable in nature. Accordingly, no interference is called for with the impugned order.

14. Writ petition sans merit and is hereby dismissed.