
(2016) 09 OHC CK 0035
In the Orissa High Court
Case No : O.J.C. Nos. 6952 of 1994

Mahanadi Coalfields Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 12-09-2016

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 10

Citation : (2017) 152 FLR 100 : (2017) 1 ILRCutack 62 : (2017) LabLR 559 :
(2017) LIC 248

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. S. Mahanty, N.K. Mishra and B. Dasmohapatra, Advocates, for the Petitioner; M/s. J. Pattanaik, H.M. Dhal and A. A. Das, Advocates, for the Opposite Parties

Final Decision : Disposed Off

Judgement

S.N. Prasad, J. - In all these three writ petitions the award passed in I.D. case Nos.19 of 1987, 50 of 1987 and 43 of 1987 are under challenge both by the side of Management and the workmen and also for issuance of direction upon the Management to release the back wages, hence all the three writ petitions are taken up together for their final disposal.

O.J.C. No.6952 of 1994:

This writ petition has been preferred by the Management of Mahanadi Coalfields Ltd., Talcher assailing part of the award passed by Industrial Tribunal in I.D. case No.43 of 1987(C) holding therein the action of the Management in retrenching the employees illegal and unjustified and as such they have been directed to be re-instatement forthwith but without back wage.

O.J.C. No.4720 of 1994:

This writ petition has been filed by Talcher Coal Mines Employees' Union

assailing the part of the award passed in I.D. case Nos.19 and 50 of 1987 whereby and where under the demand of the Union to treat the workmen as the employees of the Management of Talcher Colliery of Central Coalfield Ltd., Talcher is held not to be legal and justifiable.

O.J.C. No.3799 of 1994:

This writ petition has been filed by the Talcher Coal Mines Employees' Union assailing part of the award passed in I.D. case Nos.19, 50 and 43 of 1987 whereby and where under the back wages have been denied.

2. The brief fact of the case of the Management is that its Talcher Colliery runs an underground mine in which coal is extracted through its regular and permanent employees for certain ancillary and incidental jobs which are of casual and temporary in nature, some contractors are also engaged who in turn deploy their own employees for such work. Most of the contractor's jobs are of short duration and are not permanent and/or perennial in nature. These workers are being provided by the contractors to meet out the intermittent jobs and as such there is no employer - employee relationship in between the workmen and the petitioner - management.

3. While on the other hand the case of the workmen is that they are discharging the job which is permanent and perennial in nature such as drilling of wholes and preparation of blasting, etc. and are paid low wages @ Rs.8/- to Rs.10/- per day. Their grievance is that they be paid at par with the regular employee.

The grievance having not been redressed, they have raised dispute through its Union, conciliation having failed, the appropriate Government has made a reference to the effect that:

"Whether the demand of the Union that Sri Antaryami Garnaik and 129 others should be treated to be the workmen employed by the management of Talcher Colliery of Central Coalfields Ltd., Talcher and be paid wages and other benefits in accordance to NCWA - III is justified? If so, from what date?"

The reference has been referred before the Tribunal which was registered as I.D. case No.19 of 1987(C). The second copy of the said reference having been received by the Tribunal the same was registered as I.D. case No.50 of 1987, hence I.D. case Nos.19 and 50 of 1987(C) are based upon one reference. The second reference was made by order dated.20th April, 1987 and the same is as follows:

"Whether the action of the Management of CCL, Talcher in retrenching Sri Dinabandhu Sahoo and 46 others w.e.f. December, 1985 and Sri Pabitra Pradhan and 13 other workmen w.e.f. March, 1986 is legal and justified? If not, to what relief the workmen are entitled?"

4. The Tribunal in order to adjudicate and answer the reference heard the parties, evidence have been laid and thereafter award has been passed on 16th

December, 1993 whereby and where under the reference in connection with I.D. case Nos.19 and 50 of 1987 (C) has been answered against the workmen, while the reference in I.D. case No.43 of 1987 has been answered in favour of the workmen. The Tribunal while answering the reference in I.D. case Nos.19 and 50 of 1987 (C) has passed an award holding therein that the demand of the Union to treat the workmen as the employees of the Management of Talcher Colliery, Central Coal Field, Talcher is not legal and justified. The tribunal has answered the reference in I.D. case No.43 of 1987 (C) by holding therein that the workmen involved in I.D. case No.43 of 1987(C) being the employees of management have been illegally and unjustifiably denied of their job and so they be re-instated forthwith but without back-wages. In the light of these backgrounds these writ petitions have been filed and both the parties, i.e the Management and the Workmen through its Union has assailed the award by filing these three writ petitions.

5. The contention raised by the Management that there is no relationship of employer - employee in between the management and the workmen, hence there should not have been award in favour of the workmen in I.D. case No.43 of 1987(C).

It has been contended that when the Tribunal has answered the award against the workmen in I.D. case Nos.19 and 50 of 1987(C) holding therein that there is no relationship of employer - employee, then the different view should not have been taken by the Tribunal while answering the reference in favour of the workmen in I.D. case No.43 of 1987(C).

It has been contended that the Tribunal after going through various aspects of the matter has answered the reference in I.D. case Nos.19 and 50 of 1987(C) and the finding given therein suffers from no infirmity as because there is no relationship of employer and employee in between the management and the workmen, but this finding has not been made applicable in respect of the workmen who are party to the I.D. case No.43 of 1987(C).

6. While on the other hand the learned counsel representing the workmen has contended that there is no infirmity in the finding given by the Tribunal while answering the reference in I.D. case No.43 of 1987(C) because the Tribunal has taken note of the National Coal Wage Agreement - III (NCWA-III) which has been marked as Ext.3 wherein agreement has been arrived to the effect that the industry shall not employ employer through contractors or engage contractor labours on jobs of permanent and perennial nature and since the management is not disputing the fact that the workmen are not discharging their duties, as such they cannot say that they are the employees of the contractors after abolition of Contract Labour (Regulation and Abolition) Act in pursuance to the clause 11.5 contained in NCWA-III.

It has been contended by rebutting the stand of learned counsel for the management that the workmen are not working in the job which is of permanent

and perennial in nature and as such there is no question of applicability of clause 11.5 of NCWA-III. It has been contended that the Tribunal after taking into consideration the fact that there is abolition of contract labours in pursuance to the Contract Labour (Regulation and Abolition) Act 1971 wherein as per the provision as contained in Section 10(1) specific agreement has been arrived as contained in NCWA-III not to employ labour through contractors or engage contractor's labour on work which is of permanent and perennial nature and as such it goes without saying that these workmen since are working will be said to be the employees of the Central Coal Field Ltd. and not of the contractors.

It has been contended that the nature of the work which is being performed by the workmen is of permanent and perennial in nature and if these works will be stopped, the entire business of the coalfield will go.

In the light of these rival submissions, the respective parties have defended and opposed the finding given by the Tribunal which is impugned in this writ petition.

7. Before examining the issue raised, it is important to have a discussion on the provision of Contract Labour (Regulation and Abolition) Act, 1970 (in short C.L.R.A. Act). The C.L.R.A. Act deals, inter alia, with its extent and application. The relevant is Section 1 which is being reproduced herein below:-

"1. Short title, extent, commencement and application. - This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

(4) - It applies --

(a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen :

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide the question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation : For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature --

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, Or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year."

This section provides that this section provides that the CLRA Act applied to every establishment and every contractor of the specific description. However, the establishment in which work of an intermittent or casual nature is performed are excluded from the purview of the Act.

Section 10 is also relevant for the present case which speaks as follows:-

"10. Prohibition of employment of contract labour -(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(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.

Explanation : If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

A careful reading of Section 10 makes it evident that sub-section (1) commences with a non obstante clause and over-rides the other provisions of the CLRA Act in empowering the appropriate Government to prohibit by notification in the Official Gazette, after consultation with Central Advisory Board, as the case may be, employment of contract labour in any process, operation or other work in any establishment. Before issuing notification under sub-section (1) in respect of an

establishment the appropriate Government is enjoined to have regard to : (i) the conditions of work; (ii) the benefits provided for the contract labour; and (iii) other relevant factors like those specified in clauses (a) to (d) of sub-section (2). Under clause (a) the appropriate Government has to ascertain whether the process, operation or other work proposed to be prohibited is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; clause (b) requires the appropriate Government to determine 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; clause (c) contemplates a verification by the appropriate Government as to whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and clause (d) requires verification as to whether the work in that establishment is sufficient to employ considerable number of whole-time workmen. The appropriate Government may also take into consideration other relevant factors of the nature enumerated in sub-section (2) of Section 10 before issuing notification under Section 10(1) of the CLRA Act.

The establishment has been defined under Section 2(e) of the CLRA Act which is as follows:-

"2(e) "establishment" means-

- (i) any office or department of the Government or a local authority; or
- (ii) any place where any industry, trade, business, manufacture or occupation is carried on;"

In clause (e) (i) any office or department of the Government or a local authority, or (ii) any place where any industry, trade, business, manufacture or occupation is carried on. The whole purpose of incorporating the CLRA Act is to regulate and improve the condition of service of contract labours and as such the Act is an important piece of social legislation and it seeks to regulate the employment of contract labours and where necessary to abolish the same.

From perusal of the provision as contained in Section 2 of the CLRA Act it is evident that there are two requirements for determining whether contract labours should be continue or not, i.e. (i) the nature of work operated by the Contract Labour must be of perennial in nature, i.e. to say it must be of sufficient long period; and (ii) the operation carried on by the contract labours must be necessary for the industry.

In this respect it needs to refer the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Steel Authorities Steel Authority of India Ltd. and others v. National Union Waterfront Workers and others reported in (2001) 7 SCC 1. In the said decision, it is observed that on issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought

before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose. If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition.

In the case of *Workmen Nilgiri Co-op Marketing Society Ltd v. State of Tamilnadu* 2004 Law Suit (SC) 142, it is observed that while considering the relevant factors for reaching the conclusion that the contract is a sham and bogus contract, the principle which emerges is that the prima facie test for the determination is the right in the master to supervise and control the work done by the servant not only in the matter of directing work the servant is to do but also the manner in which he shall do his work.....

The proper test is whether or not the hirer had authority to control the manner of execution of the act in question. Further it is observed that, the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

In the light of this statutory provision as well as authoritative pronouncements as referred herein above, it is now to be seen the nature of work before coming to a logical conclusion regarding the issue involved in this case.

8. Indisputably the nature of work involved in this writ petition is that the workmen were working as Loaders, Tyndals and Dressers, drilling of wholes, preparation of blasting, etc. so far as it relates to I.D. case No.19 and 50 of 1987 (C) and they were paid low wages @ Rs.8/- to Rs.10/- per day. While the nature of work of the workmen with respect to I.D. case No.43 of 1987(C) is that they are Loaders, Tyndals and Dressers. It is further evident that a condition has been enshrined in NCWA-III in clause 11.5 regarding abolition of contract labour, i.e. clause 11.5.1 : industry shall not employ labour through contractor or engage contractor's labour on jobs of permanent and perennial nature. In clause 11.5.2 : Jobs of permanent and perennial nature which are at present being done departmentally will continue to be done by regular employees.

In the light of this situation it is to be assessed as to whether the nature of work performed by the set of workmen, subject matter of I.D. case No.43 of 1987(C) and I.D. case Nos.19 and 50 of 1987(C) are same and are they governed by the terms of agreement as contained in clause 11.5, contained in NCWA-III.

9. The Tribunal has taken note of ocular as well as documentary evidence and relied upon NCWA-III. The NCWA-III is an agreement which is binding upon across the country with respect to regulating the service condition of workers working under the subsidiaries of the Coal India Ltd. The Mahanadi Coalfield Ltd. being one of the subsidiaries under the Coal India Ltd. having come into existence on 3.4.1992 is also governed by the settlement known as NCWA-III. In the said settlement the agreement has been arrived that the contract labours shall be abolished so far as it relates to the job of permanent and perennial nature, meaning thereby the jobs pertaining to permanent and perennial nature has been made subject matter of notification U/s.10(1) of the CLRA Act, 1970.

10. There is no dispute about the fact that in extracting coal from underground mines, if there will be no work of loading, blasting and storing, the entire coal industry will be stopped and as such from the nature of the work it cannot be said that the work which were/are performed by the workers in question is not perennial and permanent in nature and as such taking into consideration the nature of work, we hold that the workmen were/are performing the work which is permanent and perennial in nature. Since in pursuance to the provision as contained in Clause 11.5.1 of NCWA-III whereby and where under the Coal Industries shall not employ labour through contractors or engage contractor's labour on jobs of permanent and perennial nature and if after that condition contained in the said agreement, since the work was being taken from the workmen concerned with I.D. case Nos.19 and 50 of 1987(C), hence it cannot be said that there is no violation of the provision of CLRA Act and further in view of the condition contained in Clause 11.5.1 of the NCWA-III since it is prohibited to engage workers through contractors for the job of permanent and perennial nature and even then the work are being taken from the workmen who are subjected to I.D. case Nos.19 and 50 of 1987(C), as such we are not hesitant in holding that the management has used the works of the workers even in the work which is permanent and perennial in nature and as such they will be said to be flouting the provision of CLRA Act, 1970.

11. The Tribunal has given a finding regarding the workmen who are related to I.D. case No.43 of 1987(C) since they have been retrenched from service and as such reference has been answered in their favour by directing for re-instatement but without any back wages but giving a contrary finding while answering the reference in connection with I.D. case Nos.19 and 50 of 1987(C) by holding therein that these workmen are not the workmen of the principal employer, meaning thereby according to the Tribunal they were not engaged in a work in the nature of permanent and perennial but this finding is erroneous and perverse for the reason that when no document has been produced before the Tribunal

disputing the claim of workmen of I.D. case No.19 and 50 of 1987(C) for denial of their claim to the effect that they are not the employees of the principal employer since they are not working in a job which is in the nature of permanent and perennial, but the Tribunal has forgotten to consider the fact that these workmen are also part of NCWA-III since nothing contrary has been produced by the Management before the Tribunal to disprove this aspect of the matter and as such on these grounds the finding given by the Tribunal by answering reference against the workmen in I.D. case Nos.19 and 50 of 1987(C) is not based upon the facts and the documents which were available before it.

We after examining the fact in detail and also after going through the lower court record have found that the workmen has given substantive evidence that they are working in work which is of permanent in nature and without their work the whole industry will be stopped. Even W.W.2 has deposed that they have been engaged by the contractors as an underground driller who was making payment of their wages daily, while W.W.4 has deposed that he was although supplied by the contractor to work in the colliery but his work was supervised and payment of wages was paid by the management in presence of his employer, however in cross-examination he has given contradictory statement and perhaps basing upon this the Tribunal has made out its mind by holding that the workmen of I.D. case Nos.19 and 50 of 1987(C) are the employers of the contractor, but while affirming this opinion the Tribunal has not taken into consideration the nature of work which these workmen were performing, i.e. of drilling and blasting in the underground coal mines and the same ought to have been considered by the Tribunal before holding that these workmen are not doing the work which is permanent and perennial in nature, the nature of work and operation carried on by the contract labour is necessary for the industry which is of the paramount consideration for deciding the nature of work as to whether it is permanent or perennial in nature. Since we are dealing with the case of coal mines, as such without drilling, there cannot be extraction of coal, hence from the nature of work we find that the work is permanent and perennial in nature, but this aspect of the matter has been overlooked by the Tribunal by passing the award in I.D. case Nos.19 and 50 of 1987(C).

Further the Tribunal is erred in passing award in I.D. case Nos.19 and 50 of 1987(C) by holding that the nature of work performed by them is not permanent and perennial in nature is very peculiar considering the contrary finding given in I.D. case No.43 of 1987(C) wherein the Tribunal has come to finding that the nature of work is permanent and perennial in nature and as such their retrenchment has been held to be illegal and accordingly order of re-instatement was passed. While passing the award the Tribunal has taken into consideration the provision of NCWA-III and the nature of work performed by the concerned workmen in I.D. case No.43 of 1987(C) but the same parameter has not been adopted while answering reference in I.D. case Nos.19 and 50 of 1987(C).

12. So far as scope of High Court sitting under Article 226 of the Constitution in

making judicial review of the finding given by the Labour Court or the Tribunal the authoritative pronouncement in this regard worth to be seen, i.e. in the case of Syed Yakoob v. K. S. Radhakrishnan and others, AIR 1964 SC 477 wherein it has been held that the High Court sitting under Article 226 of the Constitution of India may not exercise its power to review the fact finding giving by the Tribunal after appreciation of the factual aspect produced before it, otherwise also it will be said that the High Court has acted as appellate court.

The proposition laid down by the Hon''ble Apex Court in the case of Syed Yakoob (supra) still holds good and in this respect reference may be made to the judgment rendered by Hon''ble Apex Court in the case of M/s.Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of his Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the

Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

From the proposition as has been laid down by Hon"ble Apex Court referred herein above, if there is perverse finding or error apparent on the face of record, the High Court is to review the finding. We exercising that power and considering the fact that the Tribunal has not appreciated the facts in connection with I.D. case Nos.19 and 50 of 1987(C) regarding nature of work which were/are performed by the workmen in question and without examining the same the reference has been answered against the workmen which according to us is a perverse finding, since the reference has been answered without appreciating the nature of work of the workmen.

So far as the award passed in I.D. case No.43 of 1987(C) is concerned, according to us there is no perversity in the finding or error in the face of record since the reference has been answered taking into consideration all aspect of the matter, hence there is no scope to interfere with the finding given by the Tribunal in this case.

Applying the principles laid down by Hon"ble Apex Court as discussed herein above we thought it proper to pass following directions:-

(i) The finding given by the Tribunal in I.D. case Nos.43 of 1987(C) is in consonance with the statutory provision based upon the materials produced before it, hence we have got no hesitation in approving the award passed in I.D. case No.43 of 1987(C), accordingly the award passed in I.D. case No.43 of 1987(C) does not warrant any interference by this court.

(ii) The finding given in the I.D. case nos.19 and 50 of 1987(C) is based on wrong notion and as discussed in detail herein above and the same is perverse and accordingly we thought it proper to reverse the same, accordingly the award passed in I.D. Case Nos.19 and 50 of 1987(C) is not sustainable in the eye of law, hence set aside.

Since the reference is of the year 1987 and since then 29 years have already elapsed and the subject matter of I.D. case nos.19 and 50 of 1987(C) is for regulating the service condition, the purpose of enacting CLRA Act is to deal with the contract labour system, it appears that Parliament adopted twin measures to grab the basis of employment of contract labours; first is to employ considerable number of whole time workmen and the second is to abolish it in certain circumstances.

A perusal of the objects and reasons of the Act shows that in respect of such category as may be notified by the appropriate government, in the light of the prescribed criteria, the contract labour will be abolished and in respect of other category the service condition of the contract labours will be regulated. Keeping the purpose of enactment of the Contract Labour Regulation and Abolition Act and also keeping the fact into consideration the nature of work performed by the

workmen related to I.D. case Nos.19 and 50 of 1987(C) we have thoughtful consideration of the fact that instead of remitting the matter before the Tribunal for fresh adjudication, we thought it proper to pass an order in this regard taking into consideration the discussion having been made by us in detail above directing the management to treat these workmen as the workmen of the principal employer and be paid the wages and other benefits in accordance with the agreement.

Accordingly O.J.C. No.6952 of 1994 preferred by Mahanadi Coalfields Ltd. is dismissed and O.J.C. No.4720 of 1994 is allowed.

13. So far as O.J.C. No.3799 of 1994 the same having been preferred by the Union whereby and where under the part of the award by which the back wages have been denied has been challenged on the ground that the back wages cannot be denied.

We after appreciating the argument advanced by the parties in this regard and after thoughtful consideration of the judgment rendered by Hon''ble Apex Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others, reported in (2013) 10 SCC 324 which has been delivered by Hon''ble Apex Court after dealing with the previous judgments rendered in the case of J.K. Synthetics Ltd. v. K.P. Agarwal, (2007) 2 SCC 433 and Zilla Parishad, Gadchiroli v. Prakash, (2009) 4 Mah. L.J. 628, Hindustan Tin Works Pvt. Ltd., v. Employees. (1979) 2 SCC 80, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443, Mohan Lal v. Bharat Electronics Ltd., (1981) 3 SCC 478 has given its verdict whereby and where under it has been held that the order directing the management to pay full back wages and to that effect the proposition laid down at paragraph 38 is being reproduced here under as:-

"35. In Jagbir Singh v. Haryana State Agriculture Marketing Board, reported in (2009) 15 SCC 327, this Court noted that as on the date of retrenchment, respondent No.1 had worked for less than 11 months and held: (SCC p.335, paras 14-15)

"14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court

erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages."

16. In another judgment rendered by Hon"ble Apex Court in Tapas Kumar Paul v. BSNL and another, 2014 4 SCR 875 wherein also the order of re-instalment with full back-wages has been directed to be paid and this order has been passed taking into consideration the fact that "True occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted" and after taking into consideration the pronouncement of the Hon"ble Apex Court in the case of Deepali Gundu (supra) in which reliance has been placed in the case of Surendra Kumar Verma (supra) and Hindustan Tin Workers Pvt. Ltd. (supra) the order of re-instatement has been passed.

17. In view of the proposition as discussed herein above, we allow this writ petition by directing the management to pay entire back wages in favour of the workmen of I.D. case No.43 of 1987(C).

18. Accordingly all the writ petitions are disposed of.