
(2013) 01 JH CK 0026
In the Jharkhand High Court
Case No : Writ Petition (L) No. 6344 of 2033

Md. Minhaj Hussain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

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

Citation : (2013) 136 FLR 1076 : (2013) 3 LLJ 85

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Devi Sharan Sinha, for the Appellant; Anoop Kr. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J

1. Heard Counsel for the parties. The present petitioner is one of the 19 persons whose industrial dispute was raised by the Jharkhand Janta Mazdoor Union through its general secretary as per Annexure-2 dated 12.2.2002 seeking reference of industrial dispute upon the appropriate Government i.e. Ministry of Labour, Government of India as the competent authority in respect of the respondent-Organization i.e. B.C.C.L., which has been refused vide order dated 13.6.2003(Annexure-4) and is being assailed in the present writ application.

2. It is the case of the petitioner that he and 18 others were engaged in underground mines through Petia Shramik Sahyog Samittee from 8.1.1990 to 28.3.1992 under the respondent-organization, who was the principal employer through the contractor. Since, u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, employment and perennial nature of job through contractor is prohibited, this petitioner, therefore, raised his dispute before the Assistant Labour Commissioner who submitted the failure report after efforts of conciliation failed upon notice to the management. Failure report was sent to the competent

authority, who has refused reference by the impugned order contained at Annexure-4.

3. Counsel for the petitioner vehemently argued that there are enough evidence on record showing work having been taken through this petitioner and others for the period from 1990 to 1992 for which work order were also issued in the name of the contractor as per Annexures-8 and 9. It is therefore, submitted that order refusing reference is totally unjustified, illegal and which is not permissible under the law laid down in respect of the Industrial Disputes Act of 1947.

4. Counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 3962 of 2006 dated 18.11.2009, where in, according to the petitioner the Hon'ble Supreme Court has upheld the award of the Industrial Tribunal made on reference for adjudication of similar nature of dispute in respect of 76 persons under the BCCL itself, who were engaged through a contractor's co-operative society like the petitioner's cooperative society. The interference in the said award by the Division Bench of this Court was set aside by the Hon'ble Supreme Court holding that the question whether the contractor has been interposed between the workmen and the establishment or is a mere ruse/camouflage is itself a matter of industrial adjudication which has been rightly answered in favour of the workmen in question in the said award and the Division Bench was wrong in interfering with it. Accordingly, the petitioner submits that these workmen are also entitled for similar reference before the Industrial Tribunal under Contract Labour (Regulation and Abolition) Act, 1970.

5. Respondents have appeared and filed their counter-affidavit as also the supplementary counter-affidavit. It is argued on behalf of the respondent that the same union through whom petitioner and 18 others have represented and raised their industrial dispute had earlier raised dispute in respect of such workmen before the competent authority, Assistant Labour Commissioner (Central) Dhanbad being File No. 1/37/93/E-3, which was closed on 7.2.1994, File No. 1/338/92/E-3 closed on 14.10.1996, File No. 1/15/97/E-3 which was also closed. Thereafter, the 4th industrial dispute was raised vide File No. 1(34)/2002/E-4 wherein the management filed its reply contained at Annexure-3 to the writ application bringing to the notice of the Conciliation Officer of these facts stating that there is no relationship of management and workmen with the petitioner. No industrial dispute was apprehended and the same Union has been raising dispute for the first time relating to 63 members, second time for 82 members, third time for 95 members and on this occasion relating to 19 members of Petia Shramik Sahyog Samittee in respect of which details of the claimants are also not submitted. Counsel for the respondent has also raised the question of gross unexplained delay in raising industrial dispute even before the Assistant Labour Commissioner. Counsel for the respondent also submitted that File No. 1/37/93/E-3 was closed on 7.2.1994, File No. 1/338/92/E-3 closed on 14.10.1996, File No. 1/15/97/E-3 also closed. Learned Counsel has also relied

upon a judgment of the Hon''ble Supreme Court in the case of Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, (paras 9 and 10 thereof) and in the case of Director, Food and Supplies, Punjab and Another Vs. Gurmit Singh, (paras 7 and 12 thereof). It is submitted that in case of 9 years of delay after the alleged dispute the Hon''ble Supreme Court had denied the relief to the workmen as the claim being highly belated. It is further submitted by the Counsel for the respondents that the industrial reference is made on apprehension of dispute, which in the present case after 10 long years cannot be said to be existing and the expression used in the impugned order is only prima facie opinion of the competent authority and not in the nature of adjudication of the dispute raised. In support of his aforesaid contention he has further relied upon the judgment of the Hon''ble Supreme Court delivered in the case of The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, .

6. I have heard learned Counsel for the parties at length, gone through the relevant materials on record. The instant writ petition has been filed by the petitioner raising dispute through the Union along with 18 other persons vide Annexure-2 before the Assistant Labour Commissioner, Central, Dhanbad on the basis of the claim that they have been engaged through the contractor for the period from 8.1.1990 to 20.3.1992. From perusal of the record it further appears that the workman had been engaged till March 1992 but the Union's representatives have also raised dispute for same cause of action in respect of 63 members for which matter was closed in the year 1994, second time for 82 members for which matter was closed in the year 1996, third time for 95 members for which matter was closed in the year 1997 and now for 19 years/workmen in the year 2002 i.e. after 10 years of cessation of the engagement as claimed by the workmen in question. It therefore, appears that the respondent-Union had either raised the present dispute earlier on 3 occasion which were closed and against which the workmen were not aggrieved to approach any competent Court including under writ jurisdiction and after 10 years the same Union has supposedly raised dispute of the same nature for grievances relating to engagement of 19 workmen for the period from 1990-92. On perusal of the impugned order at Annexure-4, it prima facie reflects the application of mind refusing reference on the ground that the workman had failed to show basis for claiming such relief. However it also apparent that in the circumstance, which is indicated herein above the dispute has been raised after 10 years from the cessation of engagement in March 1992. The initiation of the instant dispute therefore suffers from gross unexplained delay and latches on the part of the petitioner. The Union has not come before this Court but the sole workman has come. Counsel for the petitioner was categorically asked about the period of reference on which the industrial dispute had been raised in the case relied upon by him i.e. workmen representing Bihar Colliery Kamgar Union v. The Employer-BCCL, which was decided by the Hon''ble Supreme Court in Civil Appeal No. 3962 of 2006 dated 18.11.2000. However, he has not been able to show when the dispute was raised in the said case and when the reference was made by the

competent authority in respect of the workmen in the said matter. On perusal of the said judgment, however it shows that the Civil Appeal was directed against the judgment dated 10.3.2003 passed by the Division Bench of this Court whereby the judgment of the learned Single Judge upholding the award of the Industrial Tribunal was set aside. Therefore, it appears that the fact situation of the said case related to a reference of a industrial dispute raised much earlier. The industrial dispute might have been promptly raised and referred to competent authority for adjudication whereupon award was made and under the facts and circumstances, Hon"ble Supreme Court upheld the award while setting aside the judgment of Division Bench interfering with the same. The very question whether the workmen therein raised industrial dispute within time and the reference was not barred by gross delay was not under consideration before the Hon"ble Supreme Court. Therefore, reliance upon the said judgment by the petitioner is completely misplaced.

7. In view of the aforesaid facts and reasons recorded herein above I, therefore, do not find any infirmity in the impugned order, more so in view of the judgment reported in the case of Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, , and in the case of Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, on the question of delay since the industrial dispute has been raised after 10 years of the alleged cause of action without any cogent explanation for the gross delay in raising the same. Accordingly, this application is dismissed as without having any merit and also suffering from gross delay.