

(2004) 04 BOM CK 0104

In the Bombay High Court

Case No : C.A.J.W.P. No. 2525 of 2004 and W.P. No. 3102 of 2004

Mukand Ltd.

APPELLANT

Vs

Its workmen and Others

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Citation : (2004) 102 FLR 201 : (2004) 3 LLJ 598

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : P.K. Rele, instructed by Piyush Shah, for the Appellant; Hutoxi Tavadia and A.K. Jalisatgi, for the Respondent

Judgement

Nishita Mhatre, J.—Rule in both petitions. Rule made returnable forthwith in both petitions by consent. Respondent No. 2 in both petitions deleted, being a formal party.

2. Both these writ petitions challenge the interim order of the Industrial Tribunal passed in a Reference before it for adjudication of the dispute as to whether the workmen concerned are entitled to the benefits of permanency as claimed by them through their union. (For the sake of convenience, the petitioner in Writ Petition No. 2525 of 2004 will be referred to as "the employer" and the petitioner in Writ Petition No. 3102 of 2004 will be referred to as "the Union").

3. The employer claims that after coming to the conclusion that there is no relationship of master and servant between it and the workmen represented by the Union, the Tribunal could not have granted the relief of status quo being maintained qua the workmen. According to the employer, since the relationship had not been established, the employer could not have been directed to continue the workmen listed in Annexure A to the statement of claim in service during the pendency of the reference.

4. As against this, the Union submits that on a bare reading of the documentary evidence on record, the Tribunal ought to have come to the conclusion that the

workmen listed at Annexure A were in fact the workmen of the Company. Reliance is placed on the judgment in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , to submit that the workmen in this case are employed in the statutory canteen and are, therefore, workmen of the principal employer. The learned advocate for the Union submits that the Tribunal has erred in not placing reliance upon the judgment of the Supreme Court. She urges that the Industrial Tribunal has erred in coming to the conclusion that the principal employer had no direct control over these workmen when there is documentary evidence to indicate otherwise.

5. Mr. Rele, learned Advocate for the employer, submits that in the case of Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, , the Supreme Court has considered whether the workmen of statutory canteens are the workmen of principal employer and has come to the conclusion that although they may be employees of the principal employer under the Factories Act for 2 purposes other than the Factories Act, they cannot be considered as the employees of the principal employer. He submits that the observations in para 101 of the Steel Authority of India Ltd. (supra) which is relied upon by the Union must be read in conjunction with the judgment which considers the case of Indian Petrochemicals Corporation Ltd. (supra).

6. After hearing the arguments at some length and on consideration of the judgment in Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., , I find that the Tribunal has erred in its conclusion that the employees who, are employed in the statutory canteen are not employees of the principal employer. In para 107 of Steel Authority of India Ltd. (supra), the Apex Court has held thus Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., at p. 1127:

"101. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the Courts have held that the contract labour would indeed be the employees of the principal employer".

7. Therefore category (iii) clearly lays down that those employees who are employed in the statutory canteen are to be considered as employees of the principal employer and at least a prima facie view ought to have been taken by the Tribunal that the Union had made out a case that the relationship of master and servant existed between the company and the workmen listed in Annexure A. The Indian Petrochemicals Corporation Ltd. (supra) case has been considered in the case of Steel Authority of India Ltd. (supra) and despite the ratio in the Indian Petrochemicals Corporation Ltd. (supra), the Supreme Court has thought it fit to observe as above in category (iii). In fact, in Mishra Dhatu Nigam's case (supra), the Supreme Court has again cleared any ambiguity and held that the decision of the Constitutional Bench in the case of Steel Authority of India Ltd. (supra) that where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor, the employees would be the employees of the principal employer and that such cases do not relate to abolition of contract labour. In Mishra Dhatu Nigam's case the Apex Court noted the submission made by the employer against regularisation in the light of the judgment in Indian Petrochemicals Corporation Ltd. However, this argument was not countenanced by the Apex Court in view of the decision of the Constitution Bench in Steel Authority of India Ltd.

8. In the present reference, what is sought is permanency in the company and benefits as a consequence of permanency. The Tribunal has lost sight of the judgment in the case of Steel Authority of India Ltd. (supra) while holding that there was no prima facie case made out by the workmen. However, the relief granted by the Tribunal cannot be faulted as the Tribunal has directed that these workmen should continue in service till such time as their services are terminated in accordance with law. Accordingly, the judgment of the Tribunal is modified. A prima facie case has been made out that there exists a master and servant relationship between the workmen and the company. The other relief granted that the services of the workmen shall not be terminated except in accordance with law by the company as well as the contractor, is maintained.

9. Certified copy expedited.

10. Parties to act on an authenticated copy of this order.