
(2012) 08 JH CK 0008

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5905 of 2010

Murli Gope and Others

APPELLANT

Vs

Damodar Valley Corpn. and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2013) 1 JLJR 335

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V.P. Singh and Ashok Kr. Sinha, for the Appellant; S.B. Gadodia and Tapash Kabiraj for D.V.C. and J.C. to G.P.-II for the State, for the Respondent

Judgement

Narendra Nath Tiwari, J.

I.A. Nos. 899 of 2011 and 63 of 2012

1. In both the applications, prayer has been made by the petitioners for directing the respondent nos. 1 to 7 to make provisional payment of Group "D" scale, which is the lowest grade in respondent-Damodar Valley Corporation (DVC for short) or to pay salary at least equal to contractor workers for which the respondents have agreed in Tripartite Settlement dated 7.12.2011. In the applications, it has been claimed that the petitioners are entitled to get at least lowest grade in respondent-DVC i.e. Group "D" and they are entitled to get monthly pay in that grade. The pay of Group "D" in DVC is Rs. 16,366/- per month. Alternatively, the petitioners claimed salary/benefits of pay at least equal to contractor workers for which the Management has agreed in Tripartite Settlement dated 7.12.2011. The petitioners have also made alternative claim for payment of salary equal to the salary of the Canteen employees at different units like Durgapur Thermal Power Station, Durgapur (DTPS for short).

2. Learned counsel, appearing on behalf of the petitioners, submitted that the respondent-Management has been paying much lesser amount to the petitioners in comparison to the benefit of pay given to the lowest grade Group "D"

employees and what is being paid to the canteen employees elsewhere by the DVC. Learned counsel submitted that the respondents are not even paying their salary at the rate-which has been agreed upon in Tripartite Settlement dated 7.12.2011.

3. The respondents have opposed the applications by filing replies. It has been stated, inter alia, that the petitioners are not entitled to the relief sought for. The petitioners are not at par with the Canteen workers of Durgapur Thermal Power Station (DTPS for short), who have been absorbed as regular employees after abolition of contract labour system by notification dated 22.12.1995.

4. It has been further stated that by order dated 15.6.2001 passed in C.W.J.C. no. 3096 of 1999(R), the Management was directed to maintain status quo so far as continuance of employment in the Canteen is concerned, till final decision is taken in one or other way by the competent authority, subject to any penal action, as may be taken against one or other workman. The authorities are maintaining status quo as per the direction of this Hon"ble Court so far as continuance of employment in respect of Chandrapura Thermal Power Station, Chandrapura (CTPS for short) Canteen workers is concerned.

5. It has been stated that the petitioners are working as Canteen workers under different contractors appointed on the basis of tenders. The last tender notice was floated by Notice No. 3258 dated 30.11.2000. However, no bidder turned up and the same contractor workers continued.

6. It has been contended that establishment of DTPS is distinct and the appropriate Government is different. The Canteen workers of DTPS have been regularized as employees of DVC on abolition of contract labour system by Notification dated 22.12.1995. The petitioners cannot be equated with the Canteen workers of DTPS. No such notification has been issued by the appropriate Government for abolition of contractor workers working in CTPS.

7. It has been stated that the benefits of Tripartite Settlement dated 7.12.2011 are available to the enlisted contractor workers engaged in O and M job. The petitioners are not enlisted as such nor are party to the said agreement. The said specific benefit could not be extended to the Canteen workers of CTPS.

8. I have heard learned counsel for the parties and considered the facts and materials on record. The petitioners by way of interim relief have prayed for a direction on the respondents to provide benefit of payment/salary provisionally in Group "D" scale, which is the lowest grade in respondent-DVC or at the rate, which has been agreed upon by the Management in Tripartite Settlement dated 7.12.2011. Alternatively, the petitioners have prayed for a direction on the respondents to make provisional payment of salary to the petitioners at par with the Canteen employees at different units like DTPS or Mezia Thermal Power Station, Bankura, West Bengal.

9. The respondents have disputed the status of the petitioners as employees of

CTPS and have also refuted their claim for salary equal to the Canteen employees of DTPS and other Thermal Power Station on the ground that the employees working at DTPS have been regularized after abolition of contract labour system of West Bengal Government.

10. So far as claim of the petitioners for payment on the basis of Tripartite Settlement dated 7.12.2011 is concerned, the respondents have disputed the same mainly on two grounds: (I) that the said settlement is meant for the employees, who are working in O and M job in CTPS, DVC, and (II) that there is order of maintaining status quo with regard to the employment of the petitioners, vide order dated 15.6.2001 passed in C.W.J.C. No. 3096 of 1999.

11. So far as first ground is concerned, the respondents have not disputed that the petitioners are working as contractor workers in CTPS of DVC.

12. I see no reason why the Management would deny the same benefit to the petitioners, who are also working as contractor workers in CTPS of DVC.

13. Another ground, which has been taken as an impediment in enhancing the pay benefit to the petitioners is the order of status quo with regard to the employment of the petitioners dated 15.6.2001 passed in C.W.J.C. No. 3096 of 1999. The order is on record as Annexure-2. The relevant portion of the order reads as follows:--

12. If any such application is preferred by the petitioners alongwith a copy of this judgment within three weeks, the authorities will maintain status quo so far as continuance of employment in the Canteen concerned, till final decision is taken in one or other way by the competent authority. However, such maintenance of status quo with regard to continuance of employment will be subject to any penal action, as may be required to be taken against one or other workman.

14. On plain reading of the said portion of the order of this Court, it is clear that the authorities were directed to maintain status quo relating to petitioners' continuance of employment in the Canteen concerned. There is no order of status quo in the matter of payment of salary or other benefits to the concerned employees. To read status quo in the matter of payment of salary to the petitioners in the said order is out of place and out of context.

15. It is well established that any order restricting any right must be strictly construed. The said order, thus, cannot be interpreted to mean a direction to the respondents for maintaining status quo with regard to enhancing salary or giving any benefit to the petitioners, as well.

16. In view of the above, since the issue regarding the petitioners' right to be treated at par with DTPS and the other issues are still to be finally decided in the writ petition, prayer for a direction on the respondents to pay salary at par with DTPS cannot be granted by way of interim relief.

17. However, since the respondent-Management has already agreed in Tripartite

settlement dated 7.12.2011 to pay certain salary to the contract labourers working in O & M in CTPS, DVC, Chandrapura, I find no reason for discriminating the petitioners with their counterpart engaged in O and M job.

18. Considering the above, these applications are disposed of directing the respondents to pay the petitioners the monthly pay as per the terms laid down in the Tripartite Settlement dated 7.12.2011, which has been agreed upon by them for the similarly situated persons, with effect from the date the said agreement has been implemented.

19. The respondents shall pay the current pay at the aforesaid agreed rate to the petitioners from the month of September, 2012 and the arrears of difference of pay to the petitioners, within two months in two equal installments-first installment by 30th September, 2012 and the second by 31st October, 2012. Both I.A. Nos. 899 of 2011 and 63 of 2012 are, accordingly, disposed of.