

(2015) 03 JH CK 0116

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 285 of 2013

Murli Gope and Others

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 2(1)

Citation : (2015) 3 JLJR 156

Hon'ble Judges : Rakesh Ranjan Prasad, J; Rongon Mukhopadhyay, J

Bench : Division Bench

Advocate : V.P. Singh, Senior Advocate, Amrita Kumari and Rashmi Kumari, for the Appellant; S.K. Ughal, Tapas Kabiraj and Yashwardhan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. A canteen was being run by a contractor at Chandrapura Thermal Power Station, a unit of DVC, who had employed the appellants on different posts in between 1979 to 1993. In course of time, a tripartite settlement was arrived at on 18.08.1980 whereby it was agreed, that the benefit, which the canteen employees at Durgapur Thermal Power Station (DTPS) is getting, would be made available to the canteen employees at Chandrapura Thermal Power Station (CTPS). In the year 1997, the Government of West Bengal issued a notification under Section 10(1) of the Contractor Labour (Regulation and Abolition) Act, 1970 prohibiting the contract labour being employed for running canteen. Consequently, the services of the canteen employees running at DTPS were regularized. On account of that, the canteen employees at DTPS were getting certain benefits which were not available to the canteen employees at CTPS and, therefore, a writ petition bearing CWJC No. 3096 of 1999 was filed before this Court for a direction to the respondents to provide them the same facilities as is being given to the canteen employees of DTPS with an additional prayer to direct the authority to abolish the system of contract labour in the canteen of CTPS.

That writ petition was disposed of giving liberty to the petitioners to move before the Central Government so that an appropriate decision be taken in the matter relating to abolition of contract labour in the canteen in terms of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The appellants-petitioners pursuant to the order passed by this Court moved before the Central Government. Meanwhile a decision came in a case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., AIR 2001 SC 3527 : (2001) 91 FLR 182 : (2001) 7 JT 268 : (2001) LabIC 3656 : (2001) 2 LLJ 1087 : (2001) 5 SCALE 626 : (2001) 7 SCC 1 : (2001) SCC(L&S) 1121 : (2001) 4 SCT 1 : (2001) AIRSCW 3574 : (2001) 6 Supreme 602 holding therein that if the factory lies in the State Government, the appropriate Government would be the State Government. In that view of the matter, the Central Government referred the matter before the State Government. Before the State Government, all the parties did appear and the respondent-DVC took a stand there that since 27.3.1998 the canteen is being not run through a contractor rather it is being run through the existing employees on ad hoc manner under the supervision of the department of HRD of CTPS. In that event, the joint Labour Commissioner directed the management of the respondent-DVC to pay-wages of Group-D to the appellants-petitioners and to regularize their services within a period of two months. However, that decision was not implemented by the respondent-DVC on the premise that the State Government had no authority to direct to regularize the services of the appellants-petitioners on the disputed question of fact where the stand of the respondents was always there that they are the employees of the contractor, whereas on account of some reasons the canteen employees were taking stand that the management of DVC is the employer. In that event, the appellants-petitioners again moved to this Court vide W.P. (L) No. 5905 of 2010 seeking a direction on the respondents to treat them as permanent canteen employees of CTPS and also for quashing of the order passed by the respondent-DVC refusing to implement the order passed by the Labour Commissioner on the premise that the order passed by this Court in CWJC No. 3096 of 1999 to maintain status-quo is still operating.

2. The stand, which was taken on behalf of the appellants-petitioners, is that they are working under the management of DVC through the IIRD Department since 1998 and as such, they are entitled to similar pay as Group-D employees under DIPS are getting and that for all practical purposes, the appellants-petitioners are the employees of CITS, as the provident fund deduction is being made by them and the salaries are being reimbursed by the respondent-DVC and that it is the DVC who has to exercise, discipline, control and supervise over them and that in view of the stand taken by the management before the Labour Commissioner that the canteen is being not run through the contractor, even a notification needs not to be issued under Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970.

3. On the other hand, the stand, which was taken on behalf of the respondent-DVC, is that the appellants-petitioners had been employed by the contractor but

the contractor stopped the work from 27.3.1998 and since then the canteen is being run in an ad hoc manner through the existing employees under the supervision of HRD Department of CTPS.

4. Further, the stand, which was taken, is that after the contractor stopped the work, the appellants-petitioners themselves formed a managing committee to run the canteen on ad hoc basis till the contractor is appointed. The said arrangement was made with a view to avoid penal action under the provision of the Factories Act.

5. Learned Single Judge by placing reliance upon the decision rendered in the cases of Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others, AIR 2005 SC 2412 : (2005) 105 FLR 1051 : (2005) 5 JT 62 : (2005) 2 LLJ 684 : (2005) 5 SCC 51 : (2005) SCC(L&S) 593 : (2005) 3 SCR 972 : (2005) 2 SLJ 440 : (2005) 2 UJ 891 as well as State of Karnataka Vs. KGSD Canteen Employees' Welfare Association { (2000) 1 SCC 567}, dismissed the writ application by holding as under:--

"In the aforesaid background of law well settled and reiterated time and again and also in the background of the present case, the petitioners could seek issuance of a notification under Section 10(1) of the Act by moving appropriate Government. In such circumstances, the appropriate Government would have to proceed to issue such notification or refuse to do so after following the procedure law under the Act, through the committee and the Advisory Board constituted for the said purpose, if such a situation was not wanted, the petitioners may have a remedy by raising an industrial dispute and seek reference from the appropriate Government before the industrial adjudicator for regularization of their services on the terms and the facts and circumstances on which they rely. In such disputed questions of fact; relating to the parties, so when these petitioners had neither initially been appointed by the respondents or were subsequently engaged by the respondents on a permanent basis against vacant sanctioned posts, in the writ jurisdiction, this Court should not exercise its discretionary power to direct their regularization or even direct the respondents to pay salary at par with the regularly engaged employees.

6. Being aggrieved with the judgment, the appellants-petitioners have preferred this intra court appeal.

7. Mr. V.P. Singh, learned senior counsel appearing for the appellants-petitioners, by referring to all those facts, relating to tripartite agreement, and the order passed by this Court, and the decision taken by the Labour Commissioner, submits that the appellants-petitioners are entitled for regularization of their services and also for equal pay and other benefits, which the canteen employees at DTPS are getting in view of the decision rendered in a case of Steel Authority of India Limited and others (supra) but the learned Single Judge wrongly rejected the writ application by placing reliance on a case of Haldia Refinery Canteen Employees Union (supra) and also a case of State of Karnataka (supra)

but in the case of Haldia Refinery Canteen Employees Union (supra), the canteen employees had been working under a contractor whereas these appellants-petitioners, as per the averment of the respondents, are not working under the contractor and that the canteen is to be maintained statutorily, whereas in the case of State of Karnataka (supra), the petitioner was never required to run a canteen statutorily and as such, those decisions were never applicable rather the decision rendered in a case of similarly situated National Thermal Power Corporation Ltd. Vs. Karri Pothuraju and Others, AIR 2003 SC 3647 : (2004) 97 CLT 96 : (2003) 7 JT 149 : (2003) 3 LLJ 567 : (2003) 6 SCALE 304 : (2003) 7 SCC 384 : (2003) SCC(L&S) 1053 : (2003) 2 SCR 426 Supp was applicable where services of the petitioner have been directed to be regularized and thus, the impugned judgment is fit. to be set. aside.

8. As against, this, Mr. R.N. Sahay, learned counsel appearing for the respondent-DVC, submits that since the appellants-petitioners are never the employees of respondent-DVC, they are not entitled to be regularized. In this regard, it was submitted that, earlier the appellants-petitioners were the employees of the contractor but after the contractor stopped the work, the appellants-petitioners themselves formed a managing committee to run canteen for which certain benefit, is being extended but giving such benefit it does not make them regular employees of the management of DVC whereas appellants-petitioners are claiming to be the employees of the management, and as such, the disputed questions of fact, cannot, be decided in an application filed under Article 226 of the Constitution of India before this Court and, therefore, learned Single Judge has rightly rejected the writ application giving liberty to the appellants-petitioners to agitate the issue before the State Government so that reference in this regard be made to decide the disputed questions of fact and under the circumstances, learned Single Judge has rightly relied upon the decisions rendered in a case of Haldia Refinery Canteen Employees Union (supra) and also in a case of State of Karnataka (supra).

9. Over passage of time, such kind of dispute as to whether the person, appointed by the contractor, would be deemed to be the employee of the management and whether they are entitled to be regularized by the management, arose, Many matters came up before the Hon"ble Supreme Court. In some of the cases, it was decided that even if the persons have been appointed by the contractor but for all practical purposes, they are the employees of the management and as such, their services were directed to be regularized, whereas in other cases contrary view has been taken, wherein it has been held that the persons, employed by the contractor, can be taken to be the employees of the management, but if would be confined to the provision of the Factories Act and not for other purposes.

10. Subsequently, when the case of Steel Authority of India Limited and others (supra) came up for consideration before the Hon"ble Supreme Court. Their Lordships took notice of those cases where one view or the other view, as stated

above, had been taken and framed the following questions for consideration:

(i) what is the true and correct import of the expression "appropriate Government" as defined in clause (a) of sub-section (1) of Section 2 of the CL11A Act;

(ii) whether the notification dated 9.12.1976 issued by the Central Government under Section 10(1) of the CLRA Act is valid and applies to all Central Government companies; and

(iii) whether automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on issuance of a valid notification under Section 10(1) of the CLRA Act, prohibiting the contract labour in the establishment concerned."

11. So far as (i) and (ii) questions are concerned, we are not concerned with that. With respect to question No. (iii), Their Lordships after examining the provisions under the Contract Labour (Regulation and Abolition) Act, 1970 did hold as follows in paragraph-89:--

"89. In the light of the, above discussion we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment."

12. However, Their Lordships thereupon took into account the number of cases, wherein divergent views had been taken by the Court which were categorized as hereunder:--

"107. 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 under Section 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 alter 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.

13. By referring to clause (iii) of aforesaid paragraph-107, Mr. V.P. Singh, learned senior counsel appearing for the appellants, would submit that, since it was

statutory obligation on the part of establishment of CTPS to maintain the canteen who has availed the services of the appellants-petitioners, the establishment is required to regularize the services, as the appellants-petitioners would be deemed to be the employees of the principal employer.

14. One may respectfully say that Their Lordships in the case of Steel Authority of India Limited and others (*supra*) have not been pleased to lay down such proposition, rather have been taken notice of the case in which such proposition has been laid down by the Hon^{ble} Supreme Court and, therefore, the question, cropped up before Their Lordships, as to whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, relationship of master and servant between them (principal employer and contract labour) emerges? Their Lordships after taking notice of the definitions of the "contract labour", "establishment" and "workman" and also several earlier decisions, was pleased to hold as under:--

"118. We have quoted the definitions of these terms above and elucidated their import. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and "workman" shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. The circumstances under which contract labour could be treated as direct workman of the principal employer have already been pointed out above.

119. We are not persuaded to accede to the contention that, a workman, who is not an outworker, must be treated as a regular employee of the principal employer. It has been noticed above that an outworker falls within the exclusionary clause of the definition of "workman". The word "outworker" connotes a person who carries out the type of work, mentioned in sub-clause (C) of clause (i) of Section 2(1), of the principal employer with the materials supplied to him by such employer either (i) at his home, or (ii) in some other premises not under the control and management of the principal employer. A. person who is not an outworker but satisfies the requirement of the first limb of the definition of "workman" would, by the very definition, fall within the meaning of the term "workman". Even so, if such a workman is within the ambit of the contract labour, unless he falls within the aforementioned classes, he cannot be treated as a regular employee of the principal employer."

15. Ultimately, it was held that neither Section 10 of the CLRA Act nor any other provision in the Act whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10 of CLRA Act prohibiting employment of contract labour in any process, operation or other work in the establishment. Consequently, principal employer cannot be required to give order of absorption of the contract labour working in the establishment concerned. Subsequently, same view was expressed by Their Lordships in the

case of State of Karnataka Vs. KCSD Canteen Employees' Welfare Association (supra), wherein it was held that there might, be statutory obligation to run a canteen but that would not automatically lead to conclusion that the employees of canteen would be the employees of the principal employer for all intents and purposes and not for the purpose of Factories Act, 1948 alone and thereby it was held that the contract labour cannot claim for regularization of their services. More or less, earlier to those aforesaid decisions, same proposition had been laid down by the Hon'ble Supreme Court in the case of Haldia Refinery Canteen Employees Union (supra) holding therein that the workmen working in the canteen become the workers of the establishment for the purposes of the Factories Act only and not for any other purpose. They do not become the employees of the management for any other purpose entitling them to absorption into the service of the principal employer.

16. In view of the law laid down by the Hon'ble Supreme Court, the claim of the writ petitioners for regularization of their services was not tenable and at the same time, they also cannot seek parity in the pay scale as that, of the other employees of the establishment, as the writ petitioners cannot be said to have status of the employees of the establishment.

17. Accordingly, we do not find any illegality in the judgment passed by the learned Single Judge and hence it needs no interference.

18. Accordingly, this appeal stands dismissed.