

(2013) 07 JH CK 0158

In the Jharkhand High Court

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

Murli Gope and Others

APPELLANT

Vs

The Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 309

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

Citation : (2013) 07 JH CK 0158

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V.P. Singh and A.K. Sinha, for the Appellant; Dilip Jerath, S.K. Gupta, T. Kabiraj and R.K. Shahi, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioners" 12 in number, are seeking issuance of a mandamus upon the respondents-DVC and its officials to grant equal pay and benefits at par with the canteen employees of Durgapur Thermal Power Station. They are also seeking a direction upon the respondents to treat them as permanent canteen employees of Chandrapura Thermal power Station (CTPS) in view of the decision of the competent authority of the Government of Jharkhand dated 27th December, 2003 as contained in Annexure 4/A and 27th January, 2004 as contained in Annexure 5 to the writ petition said to have been taken pursuant to the direction passed by this Court in CWJC No. 3096/1999 dated 15th June, 2001, Annexure 2 and in CMP No. 128/2003 dated 6th May, 2003, Annexure 3 to the writ petition. These petitioners have also sought quashing of the order dated 3rd January, 2006, Annexure 7 passed by the respondent-DVC whereunder they have taken a stand that on account of the status quo order passed in CWJC No. 3096/1999, the order passed by the Labour Commissioner dated 27th January, 2004 would not be implemented till final decision is taken one or other way by the competent authority so far as the continuance of the employment of the petitioners are

concerned in the canteen in question.

2. It is the case of these petitioners that they have been working as canteen workers on different posts in the canteen maintained under CTPS, a factory within the meaning of Factories Act and had been employed between 1979 to 1993 through a contractor. Initially a tripartite settlement was arrived at on 18th August, 1980, Annexure 1 in which the representatives of the Labour Department, DVC and the canteen employees were parties and the condition no. 4 of the settlement stipulated that the canteen employees of CTPS would be given all benefits and facilities which the canteen employees of DTPS would be getting. In the Year 1997 the canteen employees of DTPS were regularized and started getting superior benefits of payment than the canteen employees of CTPS. In such circumstances they preferred a writ petition being CWJC No. 3096/1999 which was disposed of by order dated 15.6.2001 with liberty to the petitioners to approach the competent authority i.e. the Central Government with a direction to the Central Government to decide the dispute on receipt of such application and on verification of all the relevant materials. However, after passing of the said order the petitioners preferred a civil miscellaneous petition i.e. CMP No. 128/2003 to seek modification in the earlier order dated 15.6.2001 in view of the judgment rendered by the Hon"ble Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . The competent authority in the case of the petitioners became the State Government and not the Central Government. Such modification was allowed by order dated 6th may, 2003.

3. It is the contention of the petitioner that on their representation before the State Government the representatives of the management of DVC were also heard and in the meeting held on 27.12.2003 the management was directed to remove the pay anomaly in respect of these petitioners while they were dithering over the matter of their regularisation. A meeting was held on 27.1.2004, Annexure 5, in which the representatives of the management and the petitioners participated before the Joint Labour Commissioner, Jharkhand. A stand was taken by the respondent-DVC that since 27.3.1998 there are no contractors running the said canteen and the canteen is being run in an ad hoc manner through the existing canteen workmen under the control of HRD Department of CTPS. On such stand being taken by the respondent-DVC before the Joint Labour Commissioner, Jharkhand, the Joint Labour Commissioner directed that the management should provide wages of group-D employees to the petitioners within ten days and within two months the services of the petitioners working in the canteen of the CTPS should be regularized, failing which the respondents would be answerable in the contempt petition filed by the workmen against the management of DVC. On their representation again to implement the said order before the management of DVC, Annexure 7 has been issued taking a stand that on account of the order of status quo passed in CWJC No. 3096/1999 dated 15.6.2001, the DVC has been directed to maintain status quo so far as the continuance of the workmen of the canteen is concerned till final decision is

taken one way or other.

4. Learned counsel for the petitioner in the back ground of the aforesaid facts submits that these petitioners have been working as employees under the management of DVC through the HRD Department since 1998. Therefore, they are entitled for similar pay as group D employees under the DTPS, which is being denied to them. It is further stated that for all practical purposes the petitioners are employees of CTPS since the provident fund deductions are being made by them. Their salary is also being reimbursed by the respondent-DVC, which is also exercising discipline, control and supervision over them in view of the liberty granted earlier by the learned Single Judge of this Court in the judgment passed in CWJC No. 3096/1999. It is submitted that since all the respondents had categorically taken a stand before the Joint Labour Commissioner that no contractor is running the canteen since 27.3.1998, the State Government instead of issuing any notification under the provisions of the Contract Labour Regulation and Abolition Act, 1970, passed an order for their regularization in view of the direction passed by this Court earlier in CWJC No. 3096/1999. In such circumstances, learned senior counsel for the petitioners submitted that these petitioners are fully entitled to be regularized in the employment of CTPS under the DVC and also entitled to claim similar benefit as Group D employees, if not from 1980 then from 27th March, 1998 when they have been under the supervision and control of the HRD Department of CTPS.

5. Learned counsel for the respondents, on the other hand, submits that the settlement of 18.8.1980 was a mutual arrangement between the contractor, petitioners' representatives and petitioners, who were the canteen workers under the contractor in presence of the Assistant Labor Commissioner, Dhanbad. He submits that the management was not a party to that. It is further submitted on his behalf, by referring to Annexure 2 i.e. an order passed in CWJC No. 3096/1999, that a specific stand was taken by the respondent-DVC in the said case that if the competent authority i.e. the Central Government issues any notification u/s 10 of the Act and the matter is being referred to them, the DVC would have no objection. In such circumstances, the matter was disposed of with liberty to the petitioners to approach the competent authority of the Central Government with a direction to decide the dispute on receipt of such application and on verification of all the relevant materials.

6. Counsel for the respondent-DVC Mr. Jerath further submits that the canteen staff of DTPS were treated as regular employees by abolition of contract system by Notification dated 22.12.1995 within the period 1997 to 2001 and they have become direct employees of DTPS. These petitioners, who are canteen workers under CTPS, a totally different establishment, cannot seek equation with the canteen workers of DTPS unless the appropriate Government issues such notification prohibiting the use of contract labour u/s 10(1) of the Act of 1970. Learned counsel, while relying upon Annexures C, D, E, F and G to the supplementary counter affidavit filed on 10th April, 2012, submits that the

circumstances in which the ad hoc arrangement was made to run the canteen from March, 1998 are well explained in the aforesaid documents brought on record. He submits that the contractor suddenly left the canteen and stopped giving his services to the canteen. On such eventuality, vide Annexure C to the supplementary counter affidavit dated 28th March, 1998, the canteen workers volunteered to work and run the canteen and also requested for certain payments and other food articles so that the services of the canteen can be continued as it was done earlier. In such circumstances, a committee was constituted by the CTPS on 18th April, 1998 comprising of members of the management in which it was clearly resolved that the canteen would be run through existing canteen workers and expenses towards the salary, purchase of coal/fuel and reimbursement against the supply of tiffin and food to the contractor workers will be paid on the presentation of the bill by the leader of the canteen contractor workers to the Secretary of the committee. This arrangement was made only on adhoc basis in order to avoid violation of the provisions under the Factories Act. Local tenders were being floated for inviting applications from the interested contractors to run the canteen, where-after the award for work for running the canteen were be given to the successful tenderer. In such circumstances, it is submitted that the canteen workers also authorized some canteen workers as Coordinator to work on a monthly rotation basis for preparation of different types of bills relating to the canteen and canteen workers as well as to draw the same for disbursement/payment of the same amongst the workers vide Annexure E, an arrangement dated 21st May, 1998. Annexure F dated 5th May, 1998 is also to the effect that the management had made an arrangement on adhoc basis of the existing canteen workers under overall supervision of the CTPS till finalization of contract. Annexure G is to the effect that the payment of wages, fringe benefit, food and tiffin and cost of coal placed by the canteen workers through the coordinators, were being reimbursed in the manner indicated therein.

7. In such circumstances, learned counsel for the respondent-DVC submits that the aforesaid arrangement to run the canteen, which is a mandatory requirement under the Factories Act, does not act in itself making management of the CTPS as employer of the petitioners, who were canteen workers. In support of his aforesaid submission, he has relied upon the judgment of Hon'ble Supreme Court reported in the case of Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others, at para 14 to 18. Learned counsel for the respondent-DVC has further submitted that in the circumstances, which have been explained on their part, these petitioners have even been working through contractors prior to March, 1998 and, thereafter, they have themselves started running the canteen in the manner of contractor through the adhoc arrangement arrived at on their own request when the earlier contractor left the work. He submits that in such circumstances, Annexure-5, which has been relied upon by the petitioners, cannot be held to mean that the State Government had the authority to regularize these petitioners on such disputed

question of facts which could only be determined by an industrial adjudicator in a proper proceeding in a duly constituted reference case. In support of the aforesaid submission, he further relied upon the judgment in the case of State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, at para 7, 32, 35, 36, 43, 45 and 49. It is submitted that the canteen workers on their own cannot claim regularisation unless the disputed questions of fact are determined in a proper proceeding before the Industrial Court. It is not proper for this Court under Article 226 of the Constitution of India to direct regularisation of such employees where such disputed questions of fact are involved. It is further submitted that the question whether the activity of running the canteen comes within the category of prohibited contract could be determined through a proper procedure leading to the issuance of the notification u/s 10(1) of the Act of 1970. Therefore, the Joint Labour Commissioner of the State Government of Jharkhand could not have straightway directed regularisation of these petitioners. It is further submitted on their behalf that it is only a case of arrangement carried out on an adhoc basis that deduction of provident fund or such other formalities are being carried out which in any case does not amount to treating the management of CTPS as the principal employer of the canteen workers.

8. The learned Senior Counsel appearing on behalf of the petitioners in response has once again reiterated his submission that all the attendant facts which have been brought on record in the instant case show that the petitioners are the employees under the management of CTPS under the DVC. Therefore, they should not be denied the benefits of equal pay as being given to other employees in Grade-D. Learned counsel for the petitioners" also once again reiterated that the evidence of the provident fund deductions and the exercise of disciplinary control over them as also payment of bonus, wages and maintenance of attendance register etc show that these employees are the workmen of the management of CTPS under DVC. The judgment relied by the petitioners in the case of Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others, is, therefore, distinguishable in the facts and circumstances of the case.

9. I have heard learned counsel for the parties at length and gone through the relevant materials on record.

10. These petitioners in the first round of litigation had approached this Court in C.W.J.C. No. 3096 of 1999 with a prayer to direct the respondents to provide same facilities as the canteen employees of DTPS with additional prayer to abolish the contract labour system in the canteen of CTPS.

11. It appears that the respondents had taken a stand in the said writ petition that in the case of DTPS the workmen of the canteen under DTPS were regularized in view of notification dated 22.12.1995 issued by the appropriate Government prohibiting contract labour under the Act, 1970. In such circumstances, the canteen workers in the canteen run through the contractor of

DTPS, Durgapur were given regular payment. The petitioners in such circumstances pressed their prayer for directing the respondents to abolish the system of contract labour and regularize the services of the canteen workers. The DVC also submitted that if the competent authority issues any notification u/s 10 of the Act of 1970, it would have no objection. In this background, the writ petition was disposed of with liberty to the petitioners to approach the competent authority i.e. the Central Government with a direction to decide the dispute on receipt of such application and verification of all relevant materials. It was further directed that the Central Government shall proceed strictly in accordance with law and make endeavours to finalize the matter as quickly as possible, preferably within six months. Till final decision is taken by the competent authority status quo with regard to the continuance of the employment of these petitioners was directed to be maintained subject to any penal action as may be required to be taken against them. However, in view of the judgment rendered in the case of Steel Authority of India Limited (*supra*) the petitioners themselves sought a modification in C.M.P. No. 128 of 2003. It was allowed by substituting Government of Jharkhand in place of Central Government in the direction passed in C.W.J.C. No. 3096 of 1999(R) and it was held that the Government of Jharkhand would be the competent authority as per earlier order.

12. On the representation of the petitioners before the competent authority of the State Government, meetings were held between management of DVC, CTPS and the petitioners and it was brought to the notice of the Joint Labour Commissioner by the Management that since 27th March, 1998 the contractor had stopped doing the work and the work of the canteen was being run in an adhoc manner through the existing employees under the supervision of HRD Department of CTPS. In this background, the Joint Labour Commissioner had directed that management of the respondent-Corporation to pay the wages of Group-D to these petitioners and to regularize these petitioners within a period of two months.

13. The respondents as per their stand taken in the present writ petition have submitted that the petitioners" are running the canteen on adhoc arrangement on their own request after the contractors had left the work. In support of the aforesaid submission, the documents contained in Annexures C and D have been shown where a managing committee to run the canteen had been constituted. It has also been indicated that the said adhoc arrangement would be continued till the contractor is appointed with a view to avoid penal action under the provisions of Factories Act as it is a mandatory legal requirement to run a canteen. The petitioners on the other hand have taken a stand that the respondents are carrying out deductions of the provident fund amount from the wages paid to them inclusive of their dearness allowance, etc which are also being reimbursed by the management of CTPS.

14. In the background of these facts, therefore, the issue, which was raised in the original cause of action, for which petitioners had moved this Court, was that

the management had been running the canteen through the contract labourers which should be abolished. Therefore, for treating them at par with those of the canteen workers of DTPS, a statutory notification u/s 10(1) of the Act of 1970 was required to be issued by the State Government. Learned Single Judge of this Court in such circumstances, gave liberty to the petitioners to approach the competent authority which was directed to decide the dispute on their application after verification of all materials relevant. In such circumstances, representations were made by the petitioners before the statutory authority/appropriate Government of Jharkhand. It was brought to the notice of the Joint Labour Commissioner by the Management that the contractor had stopped doing the work from March, 1998. The Joint Labour Commissioner proceeded to issue direction that since the contractor was no longer running the canteen and the management of CTPS was running the same which is in the nature of perennial work, therefore, it should pay Group-D wages to the petitioners and regularise them within two months.

15. In the background of the statutory framework provided under the Act of 1970, the role of the competent authority/appropriate Government is to arrive at a decision through proper procedure under the Act of 1970 in the matter of issuance of prohibition notification u/s 10(1) of the Act of 1970. The Joint Labour Commissioner may have found that the question no longer was relevant for determination as the contractor had stopped doing the work for running the canteen. However, the Joint Labour Commissioner acting as an appropriate authority under the Act of 1970 would not have acted as an industrial adjudicator to direct regularisation of the services of the petitioners. This role was squarely within the domain of adjudicating body where either a reference seeking regularisation could have been made at the instance of the aggrieved workmen or if a prohibition notification was issued u/s 10(1) of the Act of 1970, then also the petitioners were required to seek a reference before the industrial adjudicator to determine the question whether the work itself was carried out through a contractor by the principal employer as a camouflage or a ruse. The Labour Court in such an event was required to determine the questions of fact as has been mandated by the judgment of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . In either case, the Joint Labour Commissioner did not have the jurisdiction to direct regularisation of these petitioners in the management of CTPS.

16. The judgment of the learned Single Judge of this Court passed earlier in the case of the petitioners also had proceeded on the premise that if a notification is issued by the competent authority under C.L.R. Act, 1970, then the consequential course would be open to the petitioners. As a matter of fact the SAIL judgment (supra) was delivered on 30.8.2001 before the learned Single Judge delivered the judgment dated 15th June, 2001 in CWJC No. 3096 of 1999. This judgment was later on modified in view of the judgment in SAIL (supra) vide order dated 6.5.2003 in CMP No. 128/2003 filed by the petitioners. The DVC had

also submitted that they would have no objection if the competent authority issues a notification u/s 10 of the Act of 1970 when the matter is referred thereto. The learned Single Judge of this Court, while disposing of the matter, therefore, had directed the Central Government to proceed strictly in accordance with law and make endeavour to ensure finalization of the matter within the stipulated time. In the aforesaid background, as indicated herein above, the competent authority in the circumstances could have either issued any notification u/s 10(1) of the Act of 1970 or would have refused to do so. In any case, the competent authority on his own could not have directed regularisation of the petitioners.

17. This view is also supported by the judgment relied upon by the respondents rendered by the Hon''ble Supreme Court in the case of State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, at para 32, 43, 45 and 49 of the said judgment. The Hon''ble Supreme Court while dealing with the question of status of employees of the canteen workers in the said judgment dealt at para 32 came to the conclusion that the industrial adjudicator was required to apply the relevant case law laid down by the Apex Court to come to a conclusion relating to the status of the canteen workers. Further, on the question of maintainability of a writ petition where questions of fact were disputed by either party as in the present case, the Hon''ble Supreme Court in the same judgment after discussing the case law had at para 43 opined that in such circumstances the recourse to the writ remedy was not apposite. Even on the question of regularisation, the judgment referred to supra proceeds to hold that the High Court in exercise of Article 226 of the Constitution of India is not empowered to either frame any such scheme or direct the authorities to frame such a scheme to regularize the services of adhoc employees or daily wage employees who had not been appointed in terms of the rules framed under statute or under the proviso to Article 309 of the Constitution of India.

18. 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 u/s 10(1) of the Act of 1970 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 of 1970 through the committee and the advisory Board constituted for the said purpose. If such a situation was not warranted, the petitioners may have a remedy by raising an industrial dispute and seek reference from the appropriate Government before the industrial adjudicator for regularisation 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, more 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 regularisation or even direct the respondents to pay salary at par with the regularly engaged employees. Therefore, this Court

does not find any reason to interfere in the writ petition which is accordingly dismissed. However, the petitioners may have an alternative remedy, if they so choose, to seek redressal of their grievances in accordance with law. The Contempt Case No. 977 of 2012 is also accordingly dismissed and the proceedings are dropped.