

(2012) 08 JH CK 0173

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2556 of 2002

National Coal Workers Congress

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal
I, Dhanbad and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2012) 135 FLR 1084 : (2012) 4 JCR 403

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mrinal Kumar Roy, for the Appellant; Annop Kumar Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The Award dated 19.11.2001 in Reference Case No. 11/94 passed by the Central Government Industrial Tribunal No. 1, Dhanbad, is under challenge, by the workmen as the reference has been answered against them and in favour of the Management refusing the demand of regularization of fifteen (15) workmen with effect from 1990. The terms of the reference are as hereunder :

Whether the demand of the union from the management of Bhalgora Area of M/s. B.C.C.L., P.O. Jharia, Distt. Dhanbad for regularization of Shri Phuleshwar Singh and 14 others (as per list annexed) w.e.f. 1990 is justified? If so, to what relief the workmen are entitled and from which date?

1. Sri Phuleshwar Singh.
2. Sri Vijoy Vishwakarma
3. Sri Suresh Singh.

4. Satrugan Vishwakarma
5. Amar Nath Singh.
6. Lakhan Prasad.
7. Baikunth Saw.
8. Fulchand Bhuiya.
9. Rewati Singh.
10. Vijoy Prasad.
11. Bilok Singh.
12. Mihiar Singh.
13. Mahendra Kr. Singh No. 11.
14. Sanjay Kumar Singh.
15. Vikram Vishwakarma.

2. Learned counsel for the petitioner while referring to the various averments made in the writ petition and also the impugned Award, submitted that these workmen were doing the job of Tyndals for the period ranging from 1989 to the middle of November, 1991. directly under the control and supervision of the Management, but have been denied regularization merely by dubbing them as contractor's workmen. It is the contention of the workmen that they performed underground works under the Respondents-Management of hazardous nature for the period of 190 days and more at the relevant period 1989 to the middle of 1991 but on demand being made for regularization, the Management had refused to regularize them. It is further contended on their behalf that their work was being executed continuously in different Collieries like Simlabhals Colliery, Burragarh Colliery and Hurriladih Colliery of Bhalgora area and had put more than more than 190 days each calendar year and their work was supervised by the Management officials like Mining Sardar, Overman, Supervisor and others. It is also stated that these workmen were issued Cap Lamps from the Camp Lamp Room for doing the underground work in the aforesaid Collieries under the Management and their attendance were marked in Form-C Register by the Attendance Clerk of these Collieries. They were further engaged in lowering down heavy materials in underground, lifting heavy material from underground to surface, carrying the heavy materials from one place to another while also engaged for loading and unloading of heavy materials which are generally the jobs of Tyndals. It is further submitted that since the work was permanent and perennial nature being performed by them as such they were entitled to payment of regular wages as per the provisions of National Coal Wages Agreement and given to the permanent workmen for doing the same nature of job. Accordingly, they had sought for regularization on the permanent roll of the Management when they were thrown out of job from the middle of November, 1991. The issue

was raised before the Assistant Labour Commissioner, Dhanbad, and a conciliation proceeding in reference to the dispute before the Assistant Labour Commissioner, Dhanbad ended in a failure, hence a reference was made by the Central Government which is numbered as Reference Case No. 11/94. It is further submitted that the learned Tribunal has even after adducing all cogent evidences in their support and Exhibits and at the same time the Management having failed to deny their contentions, had proceeded to answer the reference in a manner refusing relief sought for by them for regularization under the Management by the impugned award.

3. Learned counsel for the Respondents, on the other hand, submit that the reference itself as it appears from mere perusal of which, does not speak of reinstatement of the workmen alleged to have been thrown out of their jobs and has been made on the part of the Union seeking regularization of the said workmen. On the other hand, it is also submitted that the workmen except one of the workmen made in the reference who deposed before the Tribunal, the rest fourteen (14) were not produced or examined on behalf of the Union before the Industrial Tribunal during its proceedings. It is further submitted on behalf of the learned counsel for the respondents-Management that the workmen through their evidences have completely failed to show any relationship of employer and employee between the workmen and the Management, On the other hand, it is submitted that M.W.1 himself has stated that he was engaged by contractor, Mandhata Singh, who used to pay wages to him. It is further stated that the concerned workmen alleged in the reference have not worked regularly from 1989 to 1992 for more than 190 days in a year with the Management. Further from the description of the nature of work performed by them as stated in their deposition as also from the deposition of Management, the only conclusion that it appears that when they were engaged in miscellaneous nature of work by contractor and not as Tyndals on permanent basis to do underground work in the mines. The counsel for the Management has also stated that the workmen have not produced any evidence to show that they have worked for more than 190 days in a calendar year with the Management and the allegations that the Management did not produce the relevant register showing their attendance is also not founded, as they had never made any demand or request before the Industrial Tribunal giving list of documents upon which they relied and which was to be produced by the Management in question. Therefore, no adverse inference can also draw against the Management for not production of any Register by it as onus for establishing its case lay on the workmen on whose insistence the reference was made and they were required to prove their case by either producing cogent evidence or asking for production of documents upon which they seek to rely. It is further submitted on the part of the counsel for the Management that the workmen have also failed to make out a case that even though they were employed by a Contractor, the same is in a category of work which was duly notified as prohibited category of work u/s 10(1)(g) of the Contract Labour (Regulation & Abolition) Act, 1970. Moreover, by referring to the

Constitution Bench judgment of the Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , it is submitted that even in the cases where the work was to be declared of prohibited nature by a notification of the appropriate government, the workman cannot claim automatic regularization with the employer unless they were able to establish by cogent evidence before the appropriate Court or industrial tribunal that the engagement of the contractor for execution of the work through the workmen was a camouflage, or sham. It is further submitted that the learned Industrial Tribunal has extensively discussed evidence of the workmen and the Management and also the Exhibits produced on behalf of the parties and come to an appropriate finding that the workmen have failed to establish any relationship of employer and employee with the Respondents-Management in order to establish claim for their regularization under the said Management. It is further submitted that since the workmen have also failed to show any cogent evidence in the nature of regular employment for 190 days or a notification u/s 10(1)(g) of the Contract Labour (Regulation & Abolition) Act, 1970, for seeking regularization, there was no reason why the reference should not have been answered in the negative by the learned Tribunal.

4. I have heard learned counsel for the parties at length and have gone through the records including impugned Award. It appears that the learned Tribunal has taken note of the entire evidence produced on behalf of the parties, applied its mind and came to a coherent finding that the workmen have produced no document to substantiate their claim of having worked on a regular basis under the Management for a period of 190 days in any calendar year. It has also been found in course of finding recorded by the Industrial Tribunal that the sole workman W.W.1 adduced on behalf of the Union had himself admitted that they were engaged by contractor Mandhata Singh, who used to pay wages to them. It is not in dispute as per the findings recorded by the Tribunal that the workmen were not having identity card nor were members of the Provident Fund nor their names were entered in Form-B Register of the Colliery, Learned Tribunal has also taken into account that the workmen have failed to substantiate their claim that any of the said workman had worked either continuously for a period of two and half years or three years or for a period more than 190 days in one calendar year. Learned Tribunal after discussing the evidence in detail at paragraph 8, has also come to the conclusion that the workmen could not establish that they were under the direct and control and supervision of the Management and the nature of work that they performed during the relevant period was necessarily that of Tyndal. Moreover, the contention of the petitioner-workmen that the Management refused to produce the Attendance Register and other documents showing the regular nature of work was performed by them, is not sustainable and cannot be entertained, as no adverse inference can be drawn against the Management since it is workmen themselves, who had the onus to prove the fact. Further it is also settled that in absence of evidence in their custody they were required to make a request or application before the Tribunal for a direction upon the

Tribunal to produce the said documents and on failure to do so only an adverse inference could have been drawn against the Management. See JT 2012 (6) SC 466. Union of India v. Ibrahim Uddin & another. Learned Tribunal has also taken note of the fact that no explanation has been put forward by the workmen as to why any proof of the work or work slip for the years 1989-1990, were not produced on behalf of the workmen when they had managed to produce certain work slip of the year 1991. The contention of the Management has also been found to be correct by the Industrial Tribunal that the workmen, in question, were actually engaged by the concerned Contractor, who used to engage them for performing miscellaneous nature of work on need basis for specified period and they were not working as Tyndals for carrying or transporting heavy articles underground or the surface and that theirs works were not of permanent, perennial and regular nature. Learned Tribunal has also discussed the contention and evidence of the workmen that the contractor's workmen were required to load motor of different horse powers on a trolley for the purpose of taking it from one place to another or to take some other articles of different nature manually from one place to another or do work such as suction pipe extension, pipes carrying, delivery leaking repairing and foot valve changing of H.T. pump. But none of the description of the work and the evidence go to show that these workers performed these works on regular basis under the Management, rather they performed miscellaneous nature of work under the instruction of the contractor. Learned Tribunal has further gone to the discuss the contention of the workmen in relation to the application of the Contract Labour (Regulation & Abolition) Act. 1970 and found that the workmen had failed to make out a case that either the nature of the work performed by them to the contractor was of a prohibited nature declared by notification u/s 10(1)(g) of the Act or the engagement of the contractor was itself camouflage or ruse to deny regular employment to the worker, in question, by the management. Learned Tribunal in the wake of considered findings of fact that the workmen had failed to show any cogent piece of evidence in support of the relationship of employer or employee and the fact that they had worked regularly for more than 190 days in a calendar year under the control and supervision of the Management proceeded to answer the reference against the workmen holding that they have not made out a case for regularization. Even otherwise, it appears that the workmen itself have failed to produce 14 other workmen apart from only one workman, who had examined himself as W.W.1. In case of such a nature seeking regularization, it is incumbent that individual workman showing their own continuity of employment for the required period as stipulated under the act should depose with adequate documentary and oral evidence before the labour Court to establish their claim for regularization. Neither the sole workman has deposed in a manner which can establish the case of the rest of fourteen (14) workmen nor any documentary or oral evidence are in the nature, which could lead to the escapable conclusion that the workmen were actually, in fact, employees of the Management, working on the roll of the Management who have been thrown out in an arbitrary manner without applying the provisions of the Industrial Disputes Act and other Industrial

Laws. In the wake of the aforesaid facts and circumstances and the clear exposition of law laid down by the Hon"ble Supreme Court of India, this Court in exercise of writ Jurisdiction under Article 226 and 227 of the Constitution of India does not find that the learned Tribunal committed an error of law or on fact or went beyond its jurisdiction or committed any perversity or illegality so as to warrant any interference in the impugned Award. I find no merit in the writ application, it is accordingly dismissed. Petition dismissed.