
(2005) 03 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4595 of 2004

Punjab State Electricity Board	Vs	APPELLANT
Presiding Officer, Labour Court and Another		RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)
Industrial Disputes Act, 1947 — Section 2, 25F, 2A

Citation : (2005) 107 FLR 991 : (2005) 141 PLR 12 : (2005) 3 RCR(Civil) 95

Hon'ble Judges : Viney Mittal, J;H.S. Bedi, J

Bench : Division Bench

Advocate : J.S. Chaudhary and D.S. Chanan, for the Appellant; Sanjay Kuansal, P.K. Goklaney, Vikas Gupta and Dinesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—This order shall dispose of 8 writ petitions being Civil Writ Petitions No. 4595 and 4386 of 2004, 18634, 19557 of 2003, 12736, 12740, 13724 of 2004 and 8159 of 2004.

2. The challenge in all the aforesaid 8 writ petitions is to identical awards dated April 29, 2003 passed by the learned Labour Court. The former 4 above mentioned petitions have been filed by the Punjab State Electricity Board, whereas latter 4 petitions have been filed by the respective workmen claiming full back wages because the Labour Court has merely granted 25% of the back wages. For the sake of convenience, the facts are borrowed from C.W.P. No. 4595 of 2004.

3. A notice of demand was served by Jaswant Singh, respondent No. 2, under the provisions of Section 2-A of the Industrial Dispute Act (hereinafter referred to as the "Act"). He claimed that he had been employed as a Meter Reader by the Punjab State Electricity Board (hereinafter referred to as the "Board") and had worked on the aforesaid post for a continuous period of 2-1/2 years. It was further claimed that his services had been terminated by the Board with effect

from June 13, 2000 without following any procedure and without payment of any retrenchment compensation. Accordingly, it was claimed by him that he was entitled to reinstatement and back wages.

4. On failure of the conciliation proceedings, the matter was referred by the appropriate Government to the Presiding Officer, Labour Court, Ludhiana (hereinafter referred to as the - Labour Court). The stand adopted by the Board before the Labour Court was that the workman had been engaged as a private Meter Reader on contract basis vide a contract dated September 19, 1997 and the aforesaid contract was revised on two occasions i.e. on October 23, 1998 and September 30, 1999 and on expiry of the aforesaid contract his services had been dispensed with. It was claimed by the Board that the workman Jaswant Singh had never been employed by the Board and as such was not a workman under the provisions of the Act. It was further claimed that the aforesaid Jaswant Singh had been paid Rs. 1/- per reading as per the contract and, therefore, there was neither any monthly salary nor the aforesaid Jaswant Singh could be treated to be a person appointed by the Board.

5. The learned Labour Court vide award dated April 29, 2003 held that workman Jaswant Singh had been engaged as a Meter Reader by the Executive Engineer (OP), Estate Division, Ludhiana, and had worked in that capacity for a period of about 2-1/2 years i.e. up to June 20, 2000. It was further held that his services had been terminated without any notice, charge-sheet, enquiry or demand of compensation. On that basis, it was concluded that the workman had completed service for a period of more than 240 days, in the last 12 preceding months, and that he had been retrenched without following the procedure provided u/s 25-F of the Act. On the aforesaid conclusion, the termination of the workman was set aside and he was held entitled to the reinstatement. However, the learned Labour Court granted only 25% of the back wages to the workman. It is in these circumstances that the petitioner-Board has challenged the aforesaid award qua reinstatement of the four workman whereas the aforesaid four workmen have approached this Court through independent four petitions claiming full back wages.

6. The claim of the petitioner-Board has been contested by the respondent-workman by filing a written statement. In the written statement it has been claimed that the workman for all intents and purposes was engaged by the Board against regular sanctioned post but with a view to grant lessor salary, a novel method of entering into contract was devised. It was claimed by the workman that no regular appointment had been made by the Board as claimed but only some surplus employees were sought to be adjusted against the post upon which the workmen were working.

7. We have heard the learned counsel for the petitioner-Board and the learned Counsel appearing for the respondent-workmen and with their assistance have also gone through the record of the case.

8. The learned counsel appearing for the petitioner-Board has primarily raised two submissions. Firstly, it has been argued that the workmen were not employees of the Board but were working on a contract. A proforma copy of the aforesaid contract has been appended as Annexure P/1 with the present petition. Relying upon the aforesaid proforma contract, the learned counsel argues that it was provided in the aforesaid agreement that the person so engaged as private Meter Reader was to be paid charges/commission at the rate of Rs. 1A per reading and as such it was apparent that there was no regular employment ever offered to any such persons. Secondly it has been argued that there was no termination of the workmen inasmuch as their services had been dispensed with on the expiry of the contract. Thus reliance is placed upon the provisions of Section 2(o)(bb).

9. On the other hand, the learned counsel for the workmen has refuted the aforesaid contentions. It has been pointed out that the workmen had been asked to enter into the aforesaid agreement merely with a view to pay less wages to them but for all practical purposes, the workmen were to be under the control and supervision of the petitioner-Board. It has also been pointed out that the aforesaid charges/commission at the rate of Rs. 1/- per reading was in fact was to be treated as wages payable to the workmen. The learned counsel has also argued that the aforesaid contract was in fact a camouflage employed by the petitioner-Board with a view to avoid the provisions of the Act.

10. We have duly considered the aforesaid contentions of the learned counsel for the parties and have also taken into consideration the facts and circumstances of the case.

11. At the out set, we may notice certain observations made by the Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., as follows:

"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 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 labor 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 of 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."

12. In view of the law laid down by the Apex Court in the Steel Authority of India's case (supra), it is apparent that it is open for the Court to find out as to whether a contract claimed by the management, is sham and nominal, rather a camouflage or a genuine contract.

13. We have examined the factual position in the light of the aforesaid observations made by the Supreme Court. In our considered view the present workmen for all practical purposes are to be treated employees of the Board. It is clear from a pleadings of the parties, before the Labour Court as well as before this Court as well and the evidence produced by them, that the work was assigned to the workmen by the officers of the Board. The workmen were required to perform their functions in accordance with rules/instructions prevalent in the Board. The workmen were required to perform functions to the satisfaction of the Sub Divisional Officer (OP) concerned and to carry out the work i.e. meter reading in the premises of the various consumers on an authority conferred upon them by the Board. The only reason upon which the Board relies is that the payment was to be made to the aforesaid workmen on commission basis i.e. at the rate of Rs. 1/- per reading. In our view, the aforesaid fact alone is not sufficient to come to the conclusion that the workmen were working on contract basis and were not under the control and supervision of the officers/officials of the Board. In view of the aforesaid facts, there can hardly be any doubt that on the lifting of the veil it stands clearly established that the workmen under reference were engaged for the benefit of the Board and were always under the supervision and control of the Board. The plea taken by the Board that the aforesaid workmen were merely contract employees, as such, cannot be accepted.

14. Having come to the aforesaid conclusion, the second contention raised by the learned counsel for the petitioner-Board also fails. Once it has been held by us that the workmen were the employees of the Board then by any stretch of imagination they could not be treated to be merely contract employees.

15. It is not in dispute that the workmen had worked for a continuous period of more than 240 days in the last 12 months preceding the date of their termination. It is also not in dispute that the provisions of Section 25-F of the Act were not complied with, before the service of the workmen were dispensed with. Accordingly, we have no hesitation in holding that the Labour Court had rightly come to the conclusion that the workmen were entitled to reinstatement with continuity of service.

16. Coming to the challenge made by the workmen while claiming full back wages, we are satisfied that the Labour Court had rightly granted them 25% of the back wages. Workman had been engaged not on any fixed salary. In these circumstances, it would be just and appropriate that the workmen are held entitled to payment of 25% of the back wages. Thus the claim of the workmen

for full back wages is also declined.

17. In view of the aforesaid discussion, we do not find any merit in the present writ petitions. The same are, accordingly, dismissed.