
(2003) 06 JH CK 0104
In the Jharkhand High Court
Case No : C.W.J.C. No. 3630 of 1997 (R)

Rajendra Bhagat and Others	Vs	APPELLANT
The Labour Court and Another		RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2004) 102 FLR 680 : (2004) 3 JCR 85

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sumeet Kumar Gadodia and A.B. Kumar, for the Appellant; T.K. Das, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Sumeet Kumar Gadodia, learned counsel appearing on behalf of the petitioner and Mr. T.K. Das, learned counsel for the respondent No. 2.

2. At the very outset, Mr. Sumeet Kumar Gadodia appearing on behalf of the petitioners prayed that he may be allowed to make necessary correction in the cause title of the Writ Application. He may do so.

3. In this Writ Application, the petitioners pray for quashing only a portion of the award passed in Reference Case No. 11 of 1987 as contained at Annexure 1 in so far as it relates to disallowing back wages to the petitioners. Consequently the petitioners have prayed that an appropriate order be passed directing the respondent No. 2 to pay the entire back wages from the date of dismissal till date of reinstatement.

4. The case of the petitioners is that although they were permanent employees of the respondent No. 2, they were not getting bonus and other reliefs as a result whereof they continuously made demands. Being displeased the management

did not allow the petitioners to attend their duties and finally terminated their services by striking off their names from the employment register with effect from 13/14.3.1988.

5. A dispute was being referred for adjudication before raised which ultimately culminated in the matter the Labour Court, Ranchi, where it was registered as Reference Case No. 11 of 1987. Before the Labour Court, the Management took various pleas including that the petitioners were seasonal/casual labourers and that they used to render their services during the loading and unloading seasons as daily rated casual labourers.

6. The Labour Court, by award dated 10.3.1997, which was pronounced on 31.7.1997, came to the following conclusions :

(a) that the concerned workmen were workmen as per the definition of the Industrial Disputes Act;

(b) that the order of termination was not justified and it was against the principles of industrial law and that it was in violation of Section 25F of the said Act.

After having held so, the Labour Court awarded reinstatement, but declined to grant the relief of back wages on the following grounds :

(a) that the concerned workmen did not perform any duties from the date of termination;

(b) that Rajendra Bhagat (petitioner No. 1) and Birsa Oraon (petitioner No. 2) were running a betel shop and plying rickshaw respectively;

(c) that Dhasni (petitioner No. 5), Parbatia (petitioner No. 6) were doing the work of cultivation; and

(d) except Rajendra Bhagat (petitioner No. 1) and Gauri (petitioner No. 3), none of the others had been examined by the Court.

On the aforesaid grounds and applying the principles of "no work no pay" the Labour Court granted only reinstatement but did not grant back wages.

7. Mr. T.K. Das, learned counsel for the respondents has submitted that no relief should be granted to the petitioners, because the respondent No. 2 has implemented the award and since the petitioners were only the casual workers, therefore, they are not entitled to any wages.

8. The aforementioned submissions of Mr. T.K. Das are rejected on account of the fact that there is clear finding by the Labour Court at paragraph 10 that concerned workmen were permanent labourers of the Management. The paragraph 10 is being quoted hereunder :

"10. Point No. 1.--This is one of the most important point to be decided in this case. The workmen in written statement made out the case that they are

permanent workmen of the management. The management denied this aspect by stating that the concerned workmen are not workmen within the meaning of Section 2(s) of the I.D. Act. The management made out the case that they are seasonal casual labourers. In Section 2(s) of the I.D. Act workmen has been defined as workmen means any person including an apprentice employed in any industry to do any manual unskilled, skill, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express or implied. The management has filed Ext. D series the register to show that names of the concerned workmen are not in the register. Ext. D is the attendance register. Ext. D/1 is also attendance register. And Ext. D/2 is the payment register. From these registers it appears they are not with respect to labourers. They are only with respect to clerks and other staff of the management. Ext. 1 is the compromise petition dated 26.5.85 entered between the workmen and the management. From this document it appears that there was an agreement between the concerned workmen and the management that management on satisfaction of work and completion of time would make the concerned workmen permanent. Ext. 2 is a certified copy of the deposition of Lakhbir Singh the proprietor, of the management who deposed in B.S. Case Nos. 1 to 3 of 1986. In view of this statement that attendance and payment of the labourer were made on the separate sheets. Ext. D series are not of any importance. From this document it appears that Rajendra Bhagat one of the concerned workman were working since 5 to 6 years prior to deposition and he was permanent labour. From Ext. 2/a deposition of Sri Lakhbir Singh in B.S. Case No. 10 of 86 it appears that he deposed in that case that Guari, Dhania, Barty, Perbatia, Ghashni and Barka on request of the then Asstt. Labour Commissioner were made permanent by the management. He also admitted the execution of compromise petition Ext. 1. From this documents it appears that all the concerned workmen were made permanent labourer by the management. In this case W.W. 1, Rajendra Prasad and W.W. 2 Gauri Tirkey has been examined. They supported the case of the concerned workmen being permanent labourer of the management. The statement of M.W. 1 Hari Ram and M.W. 2 Kuldeep Mahto and M.W. 3 Ram Bhadur Roy can not be accepted in view of Ext. 1 and 2 series that the concerned workmen are not the permanent labourer of the management. There is absolutely no witness on behalf of the management to contradict the statement of Ext. 2 series.

9. Additionally, from a perusal of the award which has been implemented and which has not been challenged by the Management, it is evident that clear findings were recorded at paragraphs 14 and 15 to the effect that the order of termination was not justified and that it was against Section 25F of the Industrial Disputes Act.

10. Where the termination itself was found to be in violation of Section 25F of the Industrial Disputes Act, the result was that the workman concerned will always be deemed to be in service throughout and once that conclusion is reached and unless there is a clear evidence of gainful employment in the

meantime, the concerned workmen cannot be deprived of their back wages to any extent. Reference in this case may be made to the judgment of the Hon''ble Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh v. Vinod Krishan Sharma and Anr., reported in 2000 Supp (3) LLJ 1678.

11. Mr. T.K. Das, learned counsel for respondent No. 2 submits that there is a finding at paragraph 16 to the effect that the concerned workmen were gainfully employed and that they did not perform any work.

12. The aforementioned submission of Mr. T.K. Das does not find favour of this Court, because, although, there is a finding by the Labour Court that they did not do any work, yet there also an earlier finding to the effect -that the termination was in violation of Section 25F of the Industrial Disputes Act. The act of not performing any duty therefore cannot be said to be on account of the own volition of the petitioners. On the contrary, it was enforced upon them and since in any event, their termination has been held to be illegal and contrary to the provisions of Industrial Disputes Act, therefore, they will always be deemed to be in service. Additionally the Labour Court appears to have given a lot of weightage to the petitioners running either a betel shop or plying rickshaw or doing cultivation work; these are all self employments and a self employment cannot be confused nor can it be equated with gainful employment. Self employment to earn livelihood for self and the family should not be allowed to be used as a lever for the Management to deprive the workmen of their back wages. An enforced status of lying idle should also not be allowed to be considered against workmen in such cases, because if such an interpretation is given, it will mean that the concerned workmen and/or their family members must starve themselves to death. This certainly cannot be a reasonable construction nor can an activity to sustain any life on account of an illegal termination be said to be a factor to deprive and/or deny back wages. Self employment, such as pulling a rickshaw or running a betel shop or engaging oneself in cultivation should not be interlinked with gainful employment because in industrial law, employment has always to be interpreted in relation to the meaning of the words "employer" and "employee". In the case of Ranchi Electric Supply Co. Ltd. v. Suresh Sahu and Anr., reported in 1982 BLT 8 a Full Bench of the then Ranchi Bench of the Patna High Court held at paragraph 10 that the concept of employment in the industrial sense involves three ingredients, namely, employer, employee and contract of employment. Paragraph 10 of the said judgment is worth reproducing. It reads as follows :

"10. Mr. Verma has lastly submitted that it was not a fit case in which fully back wages should have been ordered to be paid on reinstatement in view of the fact that respondent No. 1 was doing business in 1969, specially when respondent No. 1 has stated that the cloth shop known as Kisan Vastralaya belonged to him since 1969. Mr. Ranen Roy, learned counsel appearing on behalf of respondent No. 1, has, however, urged that in view of the definition of the expression "employee" in Section 2(4) and the definition of the expression "employer" in

Section 2(5) of the Act, self-employment cannot be said to be employment in the industrial sense-The concept of "employment" in the industrial sense involves three ingredients, namely, employer, employee and contract of employment as laid down in the case of Chintaman Rao v. State of Madhya Pradesh 1958 2 LLJ 252. However, it is not necessary to go into this question inasmuch as it has been found by the Labour Court that it has not been shown that "the said business was continuing or that he was usefully employed in the said business so that he may not be entitled to any compensation for the loss of his service." In face of this finding it is difficult to held that respondent No. 1 was gainfully employed in his own business, even if self employment is also treated to be an employment, so as to disentitle him to whole or part of his back wages. The order of the Labour Court directing reinstatement of respondent No. 1 with full back wages is not such as calls for interference by this Court in exercise of its writ jurisdiction."

13. For all the reasons stated above, therefore, this Court is of the opinion that once a finding was reached by the Labour Court to the effect that the order of termination was contrary to the provisions of Section 25 of the Industrial Disputes Act and unjustified, it would be deemed that the petitioners were always in service and therefore, they would be entitled to all benefits that are associated with continuous service. The petitioners, having already been held to be permanent employees of the Management, the denial of back wages to them was neither fair nor proper.

14. This writ application is therefore allowed and that portion of the award which declines to grant the relief of back wages is set aside and the award is accordingly and appropriately modified to the extent that besides reinstatement, the concerned workmen shall also be entitled to the back wages for the period they remained in a status of enforced idleness.

No order as to costs.