

(2000) 08 BOM CK 0087
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 1694 of 2000

Richardson and Cruddas (1972) Ltd.	APPELLANT
Vs	
Association of Engineering Workers and Another	RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33
State Model Standing Orders — Rule 4(c)

Citation : (2001) 1 BomCR 723 : (2000) 87 FLR 573 : (2001) 3 LLJ 698

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent taken up for final hearing.

2. The Petition is directed against an award of the Central Government Industrial Tribunal dated October 29, 1999 in a reference u/s 10 of the Industrial Disputes Act, 1947.

3. The First Respondent represented the interest of 45 workers who had been engaged as temporary hands or long years, since 1979, 1980 and 1981 for different batches of workmen. The Petitioner before the Court was originally a company incorporated under the Indian Companies Act, 1913. The management of the Company was taken over by the Government of India under the Richardson Cruddas (Acquisition and Transfer of Undertaking) Act, 1972. Since take over, the Company and its undertakings are being conducted by the Central Government through the instrumentality of the Bharat Yantra Nigam Limited, a Government of India undertaking under the Ministry of Industries, Department of Heavy Industries. Before the reference came to be made to the Central Government Industrial Tribunal, culminating in the award of the present proceeding, the union representing the workers had filed complaints under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in the Industrial Court at Mumbai. Interim

orders were passed on September 30, 1992 and September 8, 1994 in these complaints, being Complaint (ULP) No. 1152 of 1992 and Complaint (ULP) No. 1224 of 1993. The Petitioner had challenged the interim orders of the Industrial Court which restrained the Company from terminating the services of the temporary workmen in a Writ Petition before this Court. On June 23, 1997, the petition came up for hearing and the learned single Judge came to the conclusion that the Appropriate Government in the case of the petitioner which is a Central Government undertaking is the Union Government and not the State Government. In that view of the matter the complaints were held to be not maintainable before the Industrial Court under the provisions of the State Act. The Letters Patent Appeal against the judgment of the learned single Judge of this Court came to be rejected on September 25, 1997. Thereafter on July 20, 1998, a reference under the provisions of Section 10 of the Industrial Disputes Act, 1947 came to be made by the Central Government to the Central Government Industrial Tribunal. The terms of reference were as follows:

"Whether the action of Management of Richardson and Cruddas (1972) Ltd., Mumbai for not regularising the following workmen (Annex-1) who put their services as casual labourers for over a period of 17 years is legal and justified? If not, what relief the following 9 workers are entitled to?"

Annexure I to the reference contained a list of the workmen in respect of whose services regularisation was sought. The dates on which each individual workman had started working as a temporary hand, since 1979, 1980 and 1981 were adverted to.

4. The case of the first Respondent ("hereinafter referred to as the Respondent") before the Industrial Court was that the Petitioner employs over 640 workmen and the Company is engaged in carrying on fabrication work in relation to turnkey projects, in areas of oil, gas and chemical equipment, offshore platforms, hydro-electric projects and railways. The workmen who had joined as temporary hands since 1979 were alleged to have been kept as temporaries until September 30, 1992 and subjected to artificial breaks which were given from time to time. The contention of the Respondent Union was that the workers were being kept as temporary employees only to deprive them of the conditions of service of permanent workmen. The statement of claim before the Industrial Court set out that workmen were being paid wages at a rate which was lower than what was allowed to the unskilled workmen in the permanent service of the Company and that the temporary hands were not entitled to various other service conditions such as house rent allowance, education allowance and leave travel allowance. It was alleged that the workers were denied annual leave with wages and other heads of leave which were allowed to permanent workmen. The temporary workers were not given the benefit of yearly increments. A grievance was made of the fact that since 1982, the Petitioner Company had regularized the services of workmen who had joined work as temporaries after the initial dates of engagement of the 45 workmen who were the subject matter of the

industrial reference. This is stated to have taken place in the years 1985, 1989 and 1993. According to the union, the workers were doing work of a permanent nature and were working as Coolies i.e. helpers to fitters, assemblers, mechanical fitters, wiremen and pump operators amongst others. In the circumstances, alleging that the workmen had been deprived of service benefits for over 17 years, a plea was made to regularize the services of the workmen as permanent workmen from the date of their employment with consequential benefits.

5. The defence to the reference, made out in the written statement of the petitioner employer was that the workmen were intermittently engaged by the Company on account of the occasional needs of the Company. These workers, it was stated, were engaged due to the exigencies of work and the Company, which had since become a sick industry had no sanctioned posts available. It was stated that the company had been declared as a sick unit by the BIFR and was in the nursing period under a rehabilitation package which had been approved by the BIFR. The company, it was stated, had declared a voluntary retirement scheme for its permanent employees. According to the management, there was little work available for the existing workmen and as a result a wage liability of Rs. 50 lakhs to Rs. 60 lakhs per month was being incurred. The Company did not deny the fact that workmen who had joined as temporaries after the 45 workmen in question had been granted permanency in service. However, it was set out that this was at the request of the union. The conditions of service of permanent employees were stated to be regulated by industrial settlements and since these were not applicable to temporary workers, it was stated that they would not be entitled to the benefits of those service conditions.

6. Before the Industrial Court, evidence came to be recorded on behalf of both the Respondent Union and the Petitioner employer. By its award dated October 29, 1999, the Industrial Court came to the conclusion that (1) The Chart produced by the Petitioner, Exh. 31, shows that the workers had not completed 240 days of service during the period 1986 to 1991. The Company had however, not produced the relevant records before the Court prior to that date and an adverse inference would, therefore, be liable to be drawn against the management. (2) Admittedly, services of the workers who had joined service as temporary workers after the 45 workers who were the subject matter of the reference, came to be regularised. (3) The temporary workers had been working for long years without the grant of service benefits at par with permanent workmen. (4) There was no substance in the argument urged on behalf of the management that there are no posts available on which the workers could be regularised. After arriving at the aforesaid findings, the Industrial Court held that the workmen shall be entitled to regularisation from the dates on which their juniors were regularised, though, in the circumstances, they would not be entitled to back wages until October 1, 1992. The Industrial Tribunal held that from October 1, 1992, the workers were admittedly in continuous service, under the protective orders passed by the Industrial Court. Since the temporary

workers were working together with permanent workers after 1992, it was held that they should be entitled to the benefit of back wages on and from October 1, 1992.

7. In assailing the correctness of the Award of the Industrial Tribunal, learned Counsel appearing on behalf of the Petitioner stated that the workmen had clearly not completed 240 days of service and were, therefore, not entitled to regularisation. In so far as the norm of 240 days is concerned, learned counsel appearing on behalf of the parties stated that it was common ground that the State Model Standing Orders framed under the Industrial Employment Standing Orders Act were not applicable since the appropriate Government was not the State Government. That is a matter of some relevance because Rule 4(c) of the State Model Standing Orders provides that a Badli or temporary worker who has put in 240 days of uninterrupted service during a period of the preceding 12 months shall be made permanent by the employer. In the present case, Model Standing Order 4(c) is not attracted since the Standing Orders which have been framed for the purpose of establishments in respect of which the appropriate Government is the Central Government do not contain a similar provision. In the circumstances, the benefit of the strict provisions of the 240 days Rule which would apply in the case of an establishment governed by the State Model Standing Orders, would not be attracted in the facts and circumstances of the present case. The claim for regularisation would in the present case be based not upon the application of a norm possessing a statutory flavour, such as, 240 days work in a preceding period of 12 months, but upon an industrial adjudication by the Tribunal in the reference u/s 10.

8. The present case arose out of a reference to the Industrial Court u/s 10 of the Industrial Disputes Act, 1947 in the course of which an adjudication has to be made by the Industrial Tribunal. The position as it emerges from the record of the case is as follows:

1. The 45 workers whose names were set out in the annexure to the reference before the Industrial Court, had been engaged as temporary workmen since 1979, 1980 and 1981 respectively the dates of initial engagement varying in the case of various batches of workers.
2. For the period 1986 to 1991, the Chart which was submitted by the Company at Exhibit 31 shows that the workers had not completed in the strict sense, 240 days of work.
3. The Petitioner had regularised the services of workers who had worked as temporary hands though they had joined subsequent to the 45 workers, who were the subject matter of the reference before the Industrial Court.
4. Though the workers were engaged as temporaries, the actual work which was being done by them was the same work as that was being performed by permanent workers.

5. The Petitioner Company did not produce any record before the Industrial Court as to the extent of work which was performed by the workers prior to the period 1986. In evidence, it was stated that the records for the said period were not available, though a suggestion was made that the records prior to 1986 were deliberately not being produced,

6. On and after 1992, the services of the workmen came to be protected as a result of interim orders passed by the Industrial Court. Even after this Court held on June 23, 1997 in Writ Petition No. 6458 of 1995 that the complaints which had been originally filed under the provisions of the MRTU & PULP Act, 1971 were not maintainable, and the interim orders came to an end, the services of the workmen were not terminated, and the workmen have continued to be engaged till date.

9. In this background a reference may be made to some of the salient features of the evidence which came on the record before the Industrial Court in order to consider as to whether the award of the Industrial Tribunal is sustainable with reference to that evidence. The witness for the union, Mr. Ashok Simon Kshetre, affirmed the dates on which the workmen originally joined as temporaries, as well as the dates on which workmen who are junior to those who were the subject matter of the reference had been regularized. The witness stated that the workmen had been denied the benefit of service conditions which were allowed to the permanent workmen of the company. In cross-examination, the workman stated that he had been kept in employment continuously after September 30, 1992 as a result of the order of the Tribunal. There was no dispute according to the witness about the chart at Exhibit 31 submitted by the company in regard to the service which was rendered by the workers between the period 1986 and 1991. The attention of the witness was drawn to the Voluntary Retirement Scheme which had been floated by the company. On behalf of the management there were two witnesses Mr. S. Krishnamurthy, who was the Deputy Manager (Personnel and Administration) and Mr. D.K. Kamble, a clerk in the Personnel Department. The admissions which were recorded in the course of the cross-examination of S. Krishnamurthy are significant for considering the correctness of the view taken in the award of the Industrial Court. The witness stated that until 1992, the Company had a group of 100 workers, who were all engaged as temporaries. The company used to give work to a group of 30 persons at one time and this group of 30 workers was rotated by the company from time to time. The witness for the Company admitted that he had no knowledge of the facts prior to 1983 when he joined the company and he was, therefore, unable to state whether prior to 1983, the workmen had completed 240 days of service. The witness admitted to the correctness of the initial dates of joining the workmen which are set out as 1979, 1980 and 1981. The witness for the management also stated that the Company had made several temporary workers permanent, but, even thereafter, the Company continued to appoint 100 temporary workers. Significantly, the witness for the management stated that the requirement of the company is to appoint temporary workers on a day

between 30 to 40 persons. As regards the grant of permanency to workers who are junior to the concerned workmen in the reference, it was stated that this was done in consultation with the Union. The witness stated that it was a fact that the wages which were paid to temporary workers were much lower than those payable to the permanent employees.

10. The Industrial Tribunal has noted in para 21 of its award that the chart produced by the management for the period 1986 to 1991, showed that the workers had not completed 240 days service. Yet the Company had not produced any material or records for the period prior to 1986. The standing orders which were applicable under the State Rules required the Company to maintain a list of temporary workers. The Company itself proceeded on the basis, until the decision of this Court in 1997 that the Model Standing Orders under the State Rules would, in fact, apply. Despite this, no record or material was produced by the Company to show as to the extent of work which was rendered by the workmen prior to 1986. In these circumstances, the Industrial Tribunal came to the conclusion that the Company had not produced the record as regards the past service of the workmen prior to 1986, which was in its possession. Hence, an adverse inference would have to be drawn against the petitioner Company.

11. The second facet which weighed with the Industrial Tribunal was that workers who had joined as temporary hands later than the workmen concerned in the reference had been regularised. Though the petitioner Company contended that this was due to the request of the union, the Industrial Court noted that there was no settlement, or any minutes of meetings and the alleged request had not been proved with reference to any material on the record.

12. As regards the availability of posts, the Industrial Court noted that in the evidence of the witness Mr. Krishnamurthy, it had been stated that the Company did have a requirement of engaging between 30 to 40 workers on one day. In 1979, the Company had between 1800 and 1900 permanent employees and 100 temporary employees. The strength of permanent employees had since come down to 640 employees. The Industrial Court noted that the burden was on the Company to place on record material relating to the actual strength or availability of jobs available with the Company, but that burden had not been discharged. In the circumstances, it was held that the workmen were entitled to regularisation.

13. I have considered the submissions which have been urged on behalf of the petitioner. Emphasis has been placed on the submissions that the workers were engaged from time to time as temporaries depending upon the exigencies of the work. The fact which emerges from the record is that these workmen were engaged for well over a decade, and by the time the Award of the Industrial Court came to be passed, for two decades. The workmen, even if they did not complete the requirement of 240 days service, during the period 1986 to 1991, as was the submission of the Petitioner before the Industrial Court, there was no denial of the fact that they had rendered long service as temporary workers since they originally joined between the years 1979 to 1981. The Company failed to

produce on the record material or documents in its possession as regards the extent of work which was performed between 1979 and 1986. Workmen who were junior to the workers in question came to be regularised in service. The workers were denied the benefit of the conditions of service which were allowed to permanent workers and they had to work as temporaries, on paltry wages. The work which was performed by the temporary workers was of the same nature as the work performed by permanent workmen. For long years, these workers continued as temporaries only to be deprived of the security of service and the conditions of service allowed to permanent workers. The role of the petitioner, even after the takeover under a Parliamentary enactment was not what is envisaged for the State as model employer. In these circumstances, the award of the Industrial Tribunal cannot be faulted.

14. On behalf of the petitioner, it was submitted that the Company was declared as a sick undertaking and a rehabilitation package formulated by the Board for Industrial & Financial Reconstruction is in the process of being implemented. On the other hand, on behalf of the Respondents, reliance was placed on the record of proceedings of the BIFR held on December 24, 1999 in which it was stated that since 1996-1997, the company has been earning profits in successive years and the audited balance sheet of the company for the year 1997-98 shows that the net worth of the company had become positive at Rs. 349 lakhs. Para 3 of the order of the BIFR shows that as on September 30, 1999, the company had raised funds in the amount of Rs. 3609 lakhs and had incurred expenditure of Rs. 1493 lakhs leaving a surplus of Rs. 21 crores, which was required to be explained by the company. The order of the BIFR notes that as on March 31, 1999 and September 30, 1999, the performance of the company had been in line with projections, though sales and profits were some what lower. The learned counsel appearing on behalf of the Respondents also submitted that time to time the Company, has, in fact paid production bonus and overtime payment to various workers who have been the subject matter of the reference before the Industrial Court. At the same time, having regard to the submission urged on behalf of the petitioner, it is clear that the Company was declared as a sick industrial company under the provisions of the Sick Industrial Companies Special Provisions Act, 1985 and in pursuance thereof, a rehabilitation package is in the process of being implemented. In the circumstances, while the award of the Industrial Court cannot be found fault with, it would be in the interests of justice to structure the grant of relief in an appropriate manner so as to protect the interest of the petitioner in the period during which it is being rehabilitated.

15. The Industrial Court has granted relief of back wages on and from October 1, 1992. The Industrial Tribunal has done so in para 30 of the impugned award on the footing that from October 1, 1992 the workmen are in continuous service. In my view, there is some merit in the grievance of the petitioner that it would not be entirely appropriate to saddle the petitioner with the payment of back wages from October 1, 1992, since the reason why the workers were continued thereafter at least until 1997, was the protective order which was passed by the

Industrial Tribunal. It is true that even after the interim orders of the Industrial Court came to an end in 1997 upon the finding of this Court that the complaints under the MRTU & PULP Act, 1971 were not maintainable, the workmen were continued in service and were not terminated. This may be, as submitted by the learned counsel for the petitioner, due to the fact that during the pendency of the reference before the Central Government Industrial Tribunal, the petitioner considered fit and proper not to adversely affect the workmen, particularly in view of the provisions of Section 33 of the Industrial Disputes Act, 1947. Be that as it may, in the facts and circumstances of the present case, I am of the view that the direction issued by the Industrial Court should be modified so that the payment of back wages should be directed to be made on and from the date of reference which is July 20, 1998, to those workmen who will receive the benefit of regularisation in service.

16. The total number of workmen to whom the Industrial reference related was 45. I am informed at the Bar that a large number of workmen who were the subject matter of the reference, have since resigned and have left service or have died. One estimate, during the course of arguments was that 16 workmen have expired or since left service. This is subject to due verification. A measure of compensation that will meet the ends of justice will have to be devised in so far as the case of these workmen is concerned. In so far as the legal heirs of the workmen, who have expired are concerned, the benefit of the order passed by the Industrial Court would have to be allowed to them in so far as the payment of wages is concerned. However, in so far as these workmen are concerned, their legal heirs should be paid 50% of the back wages, to which the concerned workmen would have been entitled from October 1, 1992 until the date on which they expired. A similar benefit should also be granted to the workers who have since left service. In case of those workers, the back wages which would be payable under the award of the Industrial Court, should be confined to 50% of what would be payable from October 1, 1992 until the date on which they left service.

17. In so far as the remaining employees are concerned, regard must be had to the fact that the said employees would be entitled to regularisation pursuant to the award of the Industrial Court. Having regard to the situation that these remaining employees are entitled to the benefit of regularisation in service and to assured employment in service in the future, the payment of back wages in their case may be restricted to the period on and after the date of reference which is July 20, 1998. It is, however, clarified that for the purpose of continuity of service, the workmen will be entitled to the benefit of service as directed by the Industrial Court.

18. Save and except with the aforesaid modification of the award passed by the Industrial Court, I see no reason to interfere. The Petition is accordingly disposed of, in the circumstances with no order as to costs.

19. An ordinary copy of this order be made available to the parties.