

(2000) 04 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 979 of 2000

Shramik Sena and another	Vs	APPELLANT
M/s. Indian Petrochemicals Corporation Ltd. and another		RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 46

Citation : (2000) 4 ALLMR 212 : (2000) 4 BomCR 718 : (2000) 87 FLR 769 :
(2000) 2 LLJ 1633 : (2000) 4 MhLj 315

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : K.K. Singhavi, A. and S.S. Pakale, for the Appellant; C.J. Sawant, Sr.A. and M.M. Varma, for the Respondent

Judgement

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

2. The petitioner which is a registered Trade Union, has espoused the interest in these and in earlier proceedings of workers employed by the 1st respondent in a statutory canteen situated at the factory establishment at Nagothane. In the earlier proceedings, the writ petition filed by the Trade Union under Article 226 of the Constitution was allowed by a judgment and order of a Division Bench of this Court dated 29-8-1997. In Appeal, the Supreme Court, by a judgment and order dated 4-8-1999, affirmed the decision of this Court. Despite the Union having succeeded in the proceedings right upto the Supreme Court, the workers for whose benefit the proceedings came to be initiated, have still not been regularised. There are 134 workers whose livelihood is at issue and they have been in service continuously and uninterruptedly for over a decade.

3. The 1st respondent is a public sector corporation and employs more than 250 workmen at its factory at Nagothane. A canteen is required to be maintained under the mandate of section 46 of the Factories Act, 1948. The canteen is thus

a "statutory" canteen. The workers in respect of whom the present petition has been filed, have been engaged continuously through successive contractors, the dates of their initial engagement being during the period 1989 to 1991. Though the contractors have changed, the workers have continued to be engaged as before.

4. A writ petition, being Writ Petition No. 2206 of 1991, was filed by the petitioner under Article 226 of the Constitution in this Court in which a declaration was sought that the employees whose names were contained in Exhibit-A to the petition, be declared as regular employees of the 1st respondent-corporation and that a direction be issued to absorb the said employees with consequential benefits. That writ petition came to be allowed by a Division Bench of this Court on 29-8-1997 with a direction to the Corporation to absorb the employees listed in Exhibit-A to the petition subject to the fulfilment of the following conditions :--

"(a) At the time of initial appointment the workmen should be complying with the minimum and the maximum age limits prescribed under the policy of the Corporation;

(b) They must be medically fit according to the standards prescribed by the Corporation;

(c) Those who were appointed prior to the filing of the writ petition must have three years minimum service to their credit on the date of the present judgment;

(d) Those who were appointed during the pendency of the writ petition must have four years of minimum service to their credit on the date of the present judgment;

(e) All those who are not absorbed in the service of the Corporation for any of the reasons indicated above, their cases shall be considered in accordance with the provisions of the Industrial Disputes Act, 1947 when fresh recruitment to the canteen staff is made by the Corporation. All the workmen who are not absorbed for any of the conditions enumerated above, shall be given retrenchment compensation in accordance with law."

Special Leave petitions were filed before the Supreme Court by the respondent-Corporation as well as by the petitioner Union. The two appeals were disposed of by the judgment of the Supreme Court dated 4-8-1999 delivered by a Bench consisting of Hon''ble Mr. Justice S.P. Bharucha, Hon''ble Mr. Justice R.C. Lahoti and Hon''ble Mr. Justice N. Santosh Hegde. The Supreme Court held that since the canteen which has been maintained by the respondent-Corporation is a statutory canteen under the Factories Act, 1948, the workmen must be regarded as employees of the establishment for the purposes of the Factories Act though not for all other purposes. The Supreme Court thereafter, considered the question on the basis of the material on record, as to whether the workmen could in the facts of the case be regarded as employees of the management for

all purposes and answered that question in the affirmative. In holding thus the Supreme Court relied upon the following considerations which emerged from the material on the record :---

- (a) The canteen had been there since the inception of the appellant's factory;
- (b) The workmen had been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen;
- (c) The premises, furniture, fixture, fuel, electricity, utensils etc., have been provided for by the 1st respondent Corporation;
- (d) The wages of the canteen workers have to be reimbursed by the 1st respondent Corporation;
- (e) The supervision and control on the canteen is exercised by the Corporation through its authorised officer, as would be evident from the various clauses of the contract between the corporation and the contractor;
- (f) The contractor is nothing but an agent or a manager of the Corporation, who works completely under the supervision, control and directions of the Corporation; and
- (g) The workmen have the protection of continuous employment in the establishment."

The Court concluded that the contractor through whom the workmen had been engaged was not wholly independent of the management and that "the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the management." The Supreme Court upheld the directions issued by this Court in regard to the absorption of the workmen and in regard to the conditions which have to be fulfilled for the purpose of absorption. The Court held that since regularisation of the workmen was being directed "with a view to eradicate unfair labour practices and in equity to undo social injustice and as a measure of labour welfare", appropriate guidelines would need to be laid down and that the conditions which had been prescribed in the order of the Division Bench of this Court should be affirmed.

5. The petitioners submit that despite the order passed by the Supreme Court, the absorption of the workmen by the Corporation has not been carried out. After the judgment and order of the Supreme Court, the petitioner-Union, by a letter dated 27-8-1999 called upon the Corporation to furnish a copy of its recruitment policy. The Corporation, in a letter dated 21-9-1999 addressed by its Advocate stated, that until a candidate was absorbed he had no right of access to the Rules and Regulations of recruitment and absorption of the employees. The petitioner-Union had filed a writ petition in this Court, being Writ Petition No. 5817 of 1999, inter alia, for a direction to the Corporation to disclose its policy in respect of the canteen workers. The said writ petition was allowed to be

withdrawn by an order dated 17-11-1999. Thereafter, in December 1999, the Corporation furnished to the petitioner-Union through the contractor a gist of the recruitment rules that were sought to be applied. The Corporation has called upon the workers to submit additional information for considering the plea of regularisation and the information that has been sought includes (i) certificates to the effect that the concerned workmen do not belong to the "Creamy Layer" and (ii) certificates of experience. Copies of some of the letters which have been addressed by the Corporation to the workers are annexed at Exhibit "A", pages 81 to 83 to the petition.

6. Upon hearing the Learned Counsel for the petitioners and the learned Counsel for the respondent-Corporation, we find that the grievance of the petitioners relates to two essential areas; The first grievance is in regard to the contention of the Corporation that the maximum age prescribed for recruiting a fresh candidate under the Recruitment Rules is 25 years, the minimum age prescribed being 18 years. The submission urged before us on behalf of the Corporation is that regularisation of services can be granted only to those workers listed in Exhibit-A to the petition who are not under the age of 18 and are not over the age of 25 at the time of regularisation. There is no dispute about the fact that in order to be eligible for regularisation, a worker should have attained the age of eighteen years. All the workers meet that condition. The dispute is about the requirement that no worker who has crossed the age of 25 will be regularised. In considering the tenability of this submission, regard must be had to the operative direction issued by this Court in its judgment dated 29-8-1997 which was confirmed by the Supreme Court. Para (a) of the direction provides that at the time of initial appointment, the workmen should comply with the minimum and the maximum age limits prescribed under the policy of the Corporation. In our view, it would be completely contrary to the letter and spirit of the order of this Court and against the interests of justice to accede to the submission of the Corporation that none of the workers who is over the age of 25 years at present can be regularised. At the outset, it needs to be noticed that the workers to whom the present proceedings relate had been engaged on diverse dates between 1989 and 1991 and had worked since then continuously and uninterruptedly in the service of the Corporation. It would be reasonable to assume in such a case that at the time of initial recruitment by the contractors, these workers had already completed the age of 18 years. By the time, the writ petition filed by the Union was disposed of by this Court in 1987, the workers had already rendered between 6 to 8 years of service and in 1999 when the Appeals were decided by the Supreme Court, the workmen had between 8 to 10 years of service. To deny the workers the benefit of regularisation on the ground that they have now crossed the age of 25 years, would be contrary to the very basis and foundation of the judgment of this Court and the Supreme Court. The Supreme Court held in its judgment that the directions which were being issued, were with the object of eradicating unfair labour practices and in equity to undo social injustice and as a measure of labour welfare. The spirit of those

observations must guide the implementation of the directions issued by this Court and confirmed by the Supreme Court. Direction (a) provides that at the time of "initial appointment" the workers should comply with "the minimum and the maximum age limits." The minimum age limit is the age below which a worker cannot lawfully be recruited. The maximum age limit in the circumstances has to be considered to mean the age of superannuation. That would be a fair and proper and, in our view, the correct construction of the direction in the matter of regularization issued by this Court. The workers who have rendered long years of service---in this case for over a decade and who have worked continuously and uninterruptedly, are being given the benefit of regularisation. They have had to fight a long drawn legal battle with a public sector Corporation and as we find in the present case, despite having succeeded all through to the Supreme Court, they have still not reaped the fruits of regularisation. In the mean time, five of the workers have already died and have not lived to see the benefit of the assertion of their legal rights. Moreover, regard must be had in the present case to the finding of the Supreme Court that the workers were as a matter of fact the employees of the respondent-Corporation and the contractor was a mere camouflage. In other words, this was not a case where a genuine arrangement of the engagement of contract labour through a contractor was sought to be discontinued by the abolition of the contract labour. In fact, before the Supreme Court, one of the submissions urged by the learned Counsel for the Corporation was that there was no abolition of contract labour and until an abolition took place it was open to the management to manage the canteen through a contractor. This was rejected by the Supreme Court with the following observations :

"This argument would have some substance if in reality the management had engaged a contractor who was wholly independent of the manage-merit, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this, case are in fact the workmen of the management. In the background of this finding, the last argument of Mr. Andhyarujina should also fail."

The finding of the Supreme Court, therefore, is that the workmen for whose benefit the proceedings were initiated were only ostensibly engaged through a contractor but they were in fact and in substance the employees of the Corporation. In view of the aforesaid finding which was arrived at by the Supreme Court, it would not be permissible for the Corporation to now deny the benefit of regularisation to some of workers on the ground that they are not at the present time below the age of 25 years. This is merely a device, reflective of an unfortunate attempt on the part of the 1st respondent Corporation to evade its obligation to comply with the directions issued by this Court, which were affirmed by the Supreme Court. The workmen are canteen employees in categories such as supervisors, cooks, assistant cooks, vendors, cleaners and housekeepers. The maximum age limit referred to in the first direction issued by this Court must therefore mean the age of superannuation.

7. In taking this view, we are supported by a judgment of the Supreme Court in *Railway Parcels & Goods Handling Mazdoor Union v. Union of India*, reported in 2000(1) L.L.J. 1050. The Supreme Court, directed the regularisation of porters and workers at stations on the Eastern Railway. The following directions were issued by a Bench consisting of the Hon"ble the Chief Justice, Mr. Justice A.S. Anand and Hon"ble Mr. Justice Srinivasan :

"All such porters/workers who may have been initially engaged through the co-operative societies but have been continuously working with the Railways for the last 10 years or more on different assignments shall be regularised and absorbed by the Railways subject to being found medically fit and being below the age of superannuation (58 years)."

8. The 2nd point in regard to which the parties have urged rival submissions, is the relief which would be available to those workers who would not be eligible for absorption under the directions issued by this Court and affirmed by the Supreme Court. This Court has provided in direction (e) that those employees who are not absorbed in the service of the Corporation because they do not fulfil any of the first four directions, shall be considered in accordance with the provisions of the Industrial Disputes Act, 1947 when fresh recruitment to the canteen staff is made by the Corporation. The workers are required to be given retrenchment compensation in accordance with law. The establishment of the 1st respondent at Nagothane admittedly employs more than 100 workers and is consequently governed by the provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Supreme Court, it must once again be emphasised, has held "on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the management." Having regard to the findings arrived at by the Supreme Court and in view of the clear provisions of Chapter V-B, we direct that those workers who do not fulfill directions (a), (b), (c) & (d) of the conditions for regularisation, be retrenched in accordance with law after following the provisions of Chapter V-B of the Industrial Disputes Act, 1947.

9. The respondents are directed to initiate and complete the process of regularisation in accordance with the directions issued by this Court in its judgment dated 29-8-1997 and confirmed in the judgment and order of the Supreme Court dated 4-8-1999 within a period of two months from today.

In view of the aforesaid, the petition will stand disposed of with no order as to costs.

All concerned parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

10. Petition allowed.