

(2003) 06 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1847 of 2003

Steel Authority of India Ltd.

APPELLANT

Vs

Jaggu and Another

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 2, 7B
Minimum Wages Act, 1948 — Section 20

Citation : (2004) 1 LLJ 75 : (2003) 3 MPHT 357 : (2004) 1 MPLJ 479

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Ravindra Shrivastava and P. Francis, for the Appellant; P.S. Nari and K. Menon, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 27-2-2003 (Annexure P-6) of respondent No. 2, the Authority under the Minimum Wages Act, 1948 (hereinafter to be referred to as "the Act").

Respondent No. 1 Jaggu and a number of other persons were working as contract labour at Dolomite Lime Stone Mines at Kuteshwar belonging to petitioner Steel Authority of India Limited. The Government of India issued the notification dated 17-3-1993 u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting "contract labour" in such mines. The question arose whether after the issue of this notification the contract labourers became the direct employees of the petitioner company. Following the decision of the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , a Single Bench of this Court by order dated 23-10-1997 in W.P. No. 921 of 1997 answered this question in the affirmative and held that

such employees would be entitled to wages at par with regular employees of the company. The petitioner company filed L.P.A. Nos. 326 of 1997 and 18 of 1998, challenging this order. The employees submitted applications u/s 20 of the Act before the Authority under the Act on 16-6-1998. The Supreme Court transferred the L.P.As. to its own file on 19-11-1999.

The Constitution Bench of the Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, over-ruled the earlier decision in *Air India Statutory Corporation's case (supra)*, and transferred back the above mentioned L.P.As. to this Court for decision. The Division Bench decided the L.P.As. on 16-7-2002. Sub-paras (5) and (6) of Para 125 of the judgment of the Constitution Bench of the Supreme Court have been quoted in the Division Bench judgment. In short the Supreme Court said that if the contract is found to be "not genuine but a mere camouflage" the so called contract labour will have to be treated as employees of the principal employer by the "industrial adjudicator". On the other hand if the contract is found to be "genuine" the contract labour shall be given preference by the employer in future employment. There cannot be "automatic absorption". The Division Bench did not grant any relief to the employees and left the matter to be decided in the "industrial dispute". So far as the proceeding pending u/s 20 of the Act is concerned it was observed by the Division Bench that the petitioner company may raise its objections before the Authority under the Act who shall decide the same being uninfluenced by its earlier orders.

The Central Government by the order dated 27-1-2003 has referred the "industrial dispute" to the Central Government Industrial Tribunal. The Authority under the Act by the impugned order dated 27-2-2003 has rejected the preliminary objection of the petitioner company.

After hearing the learned Counsel for both the sides this Court is of the opinion that the proceedings before the Authority under the Act should remain pending until adjudication of the industrial dispute by the Central Government Industrial Tribunal. It is to be decided by the Tribunal whether the contract labourers became direct employees of the petitioner company and it is liable to pay wages to them. Then the question of quantum of wages would fall for determination by the Authority under the Act. It is yet to be decided by the industrial adjudicator, as per observations of the Supreme Court referred above, whether the petitioner company should be fastened with the liability to pay the wages of erstwhile contract labour. That is the crucial question for decision and as held by the Division Bench it could not be decided in the writ petition and it has been left to be determined by the Tribunal. Therefore, the Authority under the Act has to wait for the decision on this primary question and then it can decide what should be the amount of wages payable to the employees.

The petition is allowed. The impugned order dated 27-2-2003 of the respondent No. 2 is quashed. The Tribunal will decide the industrial dispute referred to it as early as possible. The proceedings before the Authority under the Minimum

Wages Act are stayed until the decision of the Tribunal.