

(2002) 10 JH CK 0030
In the Jharkhand High Court
Case No : CWJC No. 1013 of 1995

The Workmen of Bharat Coking Coal Ltd.	APPELLANT
Vs	
Presiding Officer, Central Government Industrial Tribunal No. 1 and Another	RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 10 JH CK 0030

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Babban Lal and Ashok Kumar Sinha, for the Appellant; A.K. Mehta and Rupesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This writ application is directed against the Award dated 26.5.1994, passed by the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad in Reference Case No. 113 of 1988 whereby he has held that the demand of the petitioner sponsoring union that the services of 20 concerned workmen be regularised with effect from 1985 is not justified.

2. The Central Government by notification dated 4.8.1988 referred the following dispute for adjudication to the Tribunal.

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that Sri Gora Chand Mahto & 19 others workmen named in the Annexure be regularized in the service of M/s. Bharat Coking Coal Ltd. from 1985, is justified? If so, to what relief the workmen are entitled ?"

3. The case of the sponsoring Union is that all the 20 workmen concerned had been working as gardeners in the premises of M/s. Bharat Coking Coal Ltd. since 1982 under the supervision of Sri C.P. Singh, Horticulture Supervisor and the management. It is contended that workmen have been working in the gardens

maintained in the guest house, C.M.D. Bungalow, Directors* bungalow, Koyla getting Rs. 200/- per month which was increased to Rs. 230/- per month. When the concerned workmen requested for regularization of their services and pay them category wages, the management stopped the concerned workmen to work from the month of May 1985, though the concerned workmen alleged to have worked for more than 240 days in a year since their appointments.

4. The respondent management on the other hand denied and disputed the relationship of employer and employee. It is stated that there is established procedure for making appointment even on daily wages and after selection, appointment letters and Identity Cards are issued to the candidates and they are issued Wages slips. Bonus Cards as well as members of C.M.P.F. None of the concerned workmen were ever issued any letter of appoint. Identity Cards, wages slip, Bonus Cards etc. The management also denied that the concerned workmen were ever paid wages by the managements. It is contended by the management that it had awarded contracts for constitution of Bungalow for Directors and officers. Guest house and Hospital etc. and further contract was awarded for plantation work for maintenance of good environment. It has been stated that none of the concerned contractors when enquired by the management came forward to claim that the concerned workmen were their employees. The Tribunal after analyzing and appreciating the entire evidence both oral and documentary answered the reference against the concerned workmen and held that they are not entitled to be regularized.

5. Mr. Babban Lal, learned counsel for the concerned workmen assailed the impugned award as being illegal and contrary to the evidence on record. Learned counsel submitted that admittedly the concerned workmen worked under the provisions of the contractors and having been worked for more than 240 days they are entitled to be regularized in service. Learned counsel further submitted that the Tribunal committed serious illegality in placing reliance upon certain exhibits and not appreciating that Sri C.P. Singh, Horticulture Supervisor identified some of the workmen who worked under his supervision.

6. From perusal of the Award it appears that the tribunal has analysed and discussed the evidence of all the witnesses examined on behalf of the workmen as also the management. The Tribunal further found that the case of the concerned workmen in the written statement was that they were directly appointed by the management on the post of gardener but in course evidence they have changed their case and took the stand that they worked under the supervision of a contractor. After considering and discussing the evidence of the witnesses examined on behalf of the concerned workmen the tribunal came to the conclusion that there is nothing on the record to show that any of the concerned workmen was directly appointed by the management or was on the roll of management was being paid wages by it directly. The relevant portion of the Award is worth to be quoted herein below :

"This witness has admitted that prior to working as mali in the bungalow of

C.M.D., he was working in the residence of the Chief Engineer in his private capacity and prior to that, he had worked in Koyla Bhawan, while the same was being constructed as Mazdoor.

Similarly MW 2 also admitted that she had not received Identity Card from the management nor she got pay slip. MW 3 also admitted that he had no paper to show that he had worked in the hospital in B.C.C. Ltd. He claimed that Sri C.P. Singh used to pay their wages on obtaining their receipt on Pay-Register. He further stated that Sri B.N. Jha, the Manager of the Township used to prepare their wages. He also admitted that they were getting only wages and not the bonus or other financial benefits.

If as may as 20 persons had regularly worked as matt and were paid their wages directly by M/s. BCCL as claimed by them there was bound to be some documentary evidence in that regard. There is no documentary evidence with the workmen. It is unlikely that the manager of the Township would have been preparing the wage slips of the workmen working as mali.

On the other hand MW 1 Sri C.P. Singh. as said earlier, had denied that any of the aforesaid persons had ever worked as mali in the establishment. He denied that the management ever had made payment to them or that he ever had made any such payments."

7. The Tribunal further observed :

"In the present case it has not been proved that all these workmen were employed either directly by the management or through a Contractor. No doubt, MW-1 has said that some of the workmen had worked under the Contractor, but there is no of those workmen in his evidence or elsewhere. Evidence of WW-1 and WW-3 does not show that they had worked through a contractor. Even then their evidence is not supporting about the stern of all the concerned workmen because their evidence also includes that of WW-2 whose case definitely stood on somewhat different footing.

Simply because the worker is contract labour will not entitled him for regularization of his service unless certain conditions are fulfilled. The contract system for employing the workmen is not illegal. It is now established that the Contract Labour (Regulation & Abolition) Act, 1970 does not declare that all the contracts are ipso facto illegal. Since the contract system of employing labour can be abolished only by application of law as provided therein. Therefore, simply because one has worked under a contractor will not ipso facto establish direct relationship of employer and employee between the principal employer and the contract labour. Therefore, from he evidence that has been brought on the record I do not find that the sponsoring Union has proved either that the concerned workmen were employed directly by the management to work as mali in which capacity they worked continuously for years, or that they were so employed after having been supplied simpliciter by the contractor to the management."

8. On the basis of the evidence adduced by the parties and considering the facts of the case the Tribunal rejected the demand of the sponsoring Union that the service of the 20 workmen should be regularized.

9. It is not the case of the petitioner in the instant writ petition that the Award passed by the Tribunal is without jurisdiction or that Award suffers from serious perversity. From the averments made in the writ petition and the submissions made by the learned counsel appearing for the petitioner-workmen, it appears that the Award has been challenged on the ground that certain evidence has not been properly appreciated by the Tribunal while passing the impugned Award. In my opinion such a ground can not be sufficient to interfere with the Award passed by the Tribunal. It is well settled that the finding of the Labour Court can not be challenged in a proceeding on the ground that the relevant materials and evidence adduced before the Labour Court or the Tribunal was insufficient or inadequate though, however, perversity of the order would warrant intervention of the Court. In this connection reference may be made to the decisions of the Supreme Court in the case of *P.G.I, of Medical Education & Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54; 2001 (1) JCR 302 (SC).

10. Taking into consideration all these facts I do not find any strong reason which warrants interference with the Award by this Court. This writ application is therefore dismissed.