

(2005) 12 P&H CK 0063
In the Punjab And Haryana At Chandigarh

T.T. Public School

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 1, 10, 12, 2, 7
Industrial Disputes Act, 1947 — Section 25F, 25H

Citation : (2006) 3 SLJ 418

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tapen Sen, J.—This Writ Petition is directed against the award dated 15.3.2001 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad (respondent No. 1) in Reference Case No. 280 of 1994 by which he was pleased to order the instatement of the respondent No. 2 (concerned workman) together with back wages and continuity in service. The petitioner is a School. It has been stated in Paragraph 2 that initially, the concerned workman was appointed as a "Chowkidar" on daily wages through a Contractor namely M/s. Continental Security Services, Faridabad. It has further been stated that the concerned workman, being the employee of the aforementioned M/s. Continental Security Services, remained on the job till 20.9.1993. It has also been stated that the petitioner School had received bills from the said Contractor for the service rendered by it and in terms of the bills, the petitioner School had made payments by cheques. In effect, therefore, the petitioner School stated that there was no direct relationship of employer and employee between them and the concerned workmen till 20.9.1993.

2. On 21.9.1993, the concerned workman filed an application vide Annexure P-1 which was addressed to the Principal of the School wherein he stated that he had come to learn that there was a vacancy of a Security Guard in the School and

therefore, he requested that he should be given a chance to serve the said School. This application was accompanied by a Biodata. It is stated that on the same day i.e., on. 21.9.1993, an appointment letter vide Annexure P-2, was issued to the concerned workman as a Security Guard on daily wages.

3. It has further been stated that the concerned workman continued working on daily wages till 10.5.1994 when he was paid full wages and relieved from duty.

4. Thereafter, he sent a Demand Notice under the provisions of the Industrial Disputes Act, 1947 alleging that he had been appointed w.e.f. 1.2.1993 as a Chowkidar on a monthly salary of Rs. 1,000/- and that his services had been terminated on 11.5.1994 without any notice. The claim put forward by the concerned workman was repudiated saying that the services of a Security Guard had been engaged through a Contractor namely M/s. Continental Security Services, Faridabad at the rate of 40/- per day.

5. It appears that thereafter, conciliation proceedings were held, but upon failure, the matter was referred by the State Government for adjudication before the Labour Court for purposes of adjudicating as to "whether termination of the service of Suresh Chander is justified and in order? If not, to what relief he is entitled to?"

6. Upon reference, the same came to be registered as Reference Case No. 280 of 1994. Upon Notices having been issued, the concerned workman filed his Statement of Claims on 29.7.1998 vide Annexure P-3. The concerned workman stated that he was working as a Chowkidar with the Management since 2.4.1993 and his monthly pay was Rs. 1,000/- per month. He also made various allegations and ultimately alleged violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and prayed that since he was illegally terminated on and from 11.5.1994; the said termination be declared as illegal and he be reinstated with full back wages together with continuity in service plus interest @ 18% on the amount of back wages.

7. In reply to the aforementioned Statement of Claims, the petitioner filed the Written Statement vide Annexure P-4 on or about 31.8.1998 denying the claims of the concerned workman and repeated that he had been engaged initially on 1.7.1993 as a Chowkidar through a Contractor namely M/s. Continental Security Services who used to submit their bills @ Rs. 40/- per day which the School paid through cheques. They also drew attention of the Labour Court and stated that the concerned workman remained on the job through the Contractor upto 20.9.1993 whereafter he was taken on in employment on and from 21.9.1993. Upon a perusal of the Statement of Claims as well as the statements made in the Writ Petition, it is evident that after 21.9.1993, the concerned workman worked till 10.5.1994 whereafter his services were terminated on and from 11.5.1994.

8. The Labour Court, vide its award dated 15.3.2001, held that termination of services of the concerned workman was illegal, being in violation of Section 25-F of the Industrial Disputes Act, 1947 and consequently, held, that he was entitled

to reinstatement together with back wages and continuity in service.

9. Mr. C.B. Goel, learned Counsel for the petitioner draws attention of this Court to Paragraph 14 of the award. Upon a perusal thereof, it is evident that the Labour Court, upon consideration of various evidences brought on record, returned a finding that the concerned workman had worked through M/s. Continental Security Services for the period 1.7.1993 to 17.9.1993. The Labour Court observes, inter alia, in Paragraph 14 as follows:

But the workman having worked through Continental Security Services with the management stands proved in view of admitted fact only with regard from 1.7.1993 to 17.9.1993.

10. The Labour Court returned the second finding to the effect that thereafter, i.e. on and from 21.9.1993 the appointment of the concerned workman with the Management stood proved. The finding of the Labour Court in Paragraph 15 reads thus:

Thereafter, his appointment with the management stands proved w.e.f. 21.9.1993.

Mr. Goel therefore submits that upon a perusal of the aforementioned two findings of the Labour Court, it is manifest that:

(a) the concerned workman was in the service of a Contractor for the period 1.7.1993 to 17.9.1993, and

(b) he came under the employment of the petitioner School only on and from 21.9.1993 and his services stood terminated on 11.5.1994.

11. Thus, for all practical purposes and according to learned Counsel, the concerned workman had worked only for 232 days and as such he cannot be said to have any industrial rights so as to complaint infraction of the provisions of the Industrial Disputes Act. Mr. Goel relies upon the judgment of this Hon'ble Court in the case of Karnal Central Coop. Bank Limited, Karnal through its Managing Director v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Ors. 1994(1) PLR 310.

12. In the aforementioned judgment, in Paragraph 5, it was observed as follows:

5. Learned Counsel for the petitioner also urged that since the workman had not put in 240 days of service, he was not entitled to any relief under the provisions of the Act and the Tribunal erred in law in directing his reinstatement. This contention too has merit and must prevail. It is by now well settled that industrial workers who do not complete 240 days of service have no industrial rights under the Act and cannot, therefore, avail of the machinery provided under the Act for the settlement of their disputes. The policy of the Act draws a distinction, between those with service of 240 days and more and others with less. It was not necessary for the management in the present case to comply with the provisions of Section 25(H) of the Act before dispensing with the

services of the workman as he admittedly had less than 240 days of service.[SIC]

13. Mrs. Abha Rathore, on the other hand, submits that the workman's engagement with a contractor was only a pretext and a sham transaction and it was camouflage to deprive the workman of his rights. She submits that the contractor had been set up by the management and in order to prove that it was a sham transaction, the concerned workman had filed an application before the Labour Court on or about 11.7.2000 wherein he had prayed for various documents including the documents in support of registration under Sections 7 and 12 of the Contractor Labour (Regulation & Abolition) Act, 1970. She submits that the aforementioned application is to be found at running Page 176 of the records of the Labour Court. She further submits that the management did not produce any of these records and therefore, the only adverse inference that can be drawn is that the contractor had been set up and that it was a camouflage for purposes of frustrating the industrial rights of the concerned workman. Mrs. Rathore relies upon the judgment of the Hon'ble Supreme Court of India in the case of H.D. Singh Vs. Reserve Bank of India and Others, and the judgment of this Court in the case of State of Haryana v. Suresh Kumar and Anr. 2001(2) RSJ 286 in support of her contention to the effect that when records are not produced, adverse inference must be drawn against the management. Mrs. Abha Rathore then argues that since nothing could be established to the effect that the contractor was registered, therefore, in view of the judgment of the Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., read with the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, , as well the judgment passed in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , the only logical conclusion that can be arrived at is that the story of a contractor was a camouflage and that it was a sham transaction and therefore, the entire period that the concerned workman had rendered under the contractor if calculated, would make the period of work much more than 232 days and therefore, the provisions of the Industrial Disputes Act would apply. She submits that the Labour Court had therefore rightly considered the aforementioned period under the Contractor because there was no genuine contract during the relevant period.

14. Before this Court proceeds to deal with the rival contentions of the Parties, it will be prudent to first take note of the argument of Mrs. Rathore to the effect that in view of the conduct and/or the action on the part of the management in not having produced the documents of registration under The Contract Labour (Regulation & Abolition) Act, 1970, an adverse inference must be drawn to the effect that there was no registration under the said act and therefore, the plea of engaging a contractor was a plea to camouflage the fact that behind the veil, lurked the face of the management.

15. Upon a perusal of Page 176 of the Lower Court records, it is evident that on 11.7.2000, prayer, inter alia, was made for production of various documents

including the license/registration under The Contract Labour (Regulation & Abolition) Act, 1970. However it is also evident that such documents were not produced before the management. The Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to for the sake of brevity as the CLR Act) was enacted for purposes of regulating the employment of contract about in certain establishments and to provide for its abolition, Section 1(4) of the CLR Act lays down that the said Act shall apply:

(a) to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour, and

(b) to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen.

The word "establishment" has been defined in Section 2(e) of the CLR Act and it means:

(i) any office or department of the Government or a local authority; or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on.

16. In the instant case, admittedly the petitioner is the T.T. Public School and in Paragraph 1 of the Writ Petition, it is stated that it is run by a Society known as Tiny Tots Educational Society, Faridabad. In view of the judgment of the Supreme Court of India delivered in the case of *Ruth Soren v. Managing Committee, East I.S.S.D.A. and Ors.* (2001) 2 SCC 115 : 2001(2) SLJ 183 (SC), this Court has grave doubts as to whether in educational institution like the petitioner School can be termed to be an "establishment" for purposes of attracting the provisions of the CLR Act. However, that is not the issue to be decided in this case and therefore, the same is left open. However, assuming for the sake of argument without expressing any opinion, even if this Court proceeds to consider that the School is an "establishment" for purposes of attracting the provisions of the CLR Act and even assuming that the argument of Mrs. Rathore is correct and that is, that adverse inference should be drawn since the Contractor was not registered and the establishment also took no steps in this regard, even then, the question that would fall for consideration is as to whether such non-registration under the CLR Act entitles the concerned workman to seek for a declaration from a Court of law that his services should be deemed to be under the principal employer?

17. The answer to the aforementioned question must be in the negative. It was also found to be in the negative in the case of *Dena Nath and others Vs. National Fertilisers Ltd. and others*, . In the aforementioned judgment of Dina Nath's case (supra), it is evident that their Lordships of the Supreme Court held that the only effect of non-compliance of the provisions of registration or license would be exposure to prosecution but the contract labour employed cannot become direct employees of the principal employer Diva Nath "scase (supra) has been duly considered by the Hon"ble Supreme Court in the Constitution Bench judgment of

Steel Authority of India Limited and Ors. v. National Union Water front Workers and Ors. (supra). At Paragraph 94, the Constitution Bench of the Apex Court has observed, inter alia, that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. Referring to Dina Nath's case, Their Lordships in Para 94 infra, observed as follows:

The Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer.

18. As has been noticed above, the CLR Act concerns itself principally with the regulation of the employment of contract labour in certain establishments and to provide for its abolition. In the instant case, there is also no evidence to the effect that a notification u/s 10 of the said Act had been issued prohibiting the employment of contract labour. In that view of the matter and taking note of the reasoning given by the Hon'ble Supreme Court in SAIL's case (supra), one must naturally come to a conclusion that the period spent prior to 21.9.1993 under the Contractor, even if it be an unregistered Contractor, cannot be counted for purposes of bringing the concerned workman within the definition of a workman having been employed by the principal employer so as to enable him to draw benefits of the Industrial Disputes Act. Such an argument is plainly misconceived.

19. To that extent therefore in the argument of Mrs. Rathore that merely because documents were not produced showing registration, therefore an adverse inference to the effect that there was no registered contractor and therefore the concerned workman should be deemed to be the workman of the principal employer as they had set up the story of a contractor as a camouflage must also therefore be rejected. In this context, Paragraph 117 of the SAIL's case (supra) also clearly points out that on an exhaustive consideration of the different provisions of the CLR Act, it is to be seen that neither do they contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied. In this context, a question formulated by the Apex Court in SAIL's case (supra) in Para 105(B) would become relevant. The answer is at Paragraph 106. These two paras read thus:

105-B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges.

106. Mr. Shanti Bhushan alone has taken this extreme stand that by virtue of engagement of contract labour by the contractor in any work of or in connection

with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. We are afraid, we are unable to accept the contention of the learned Counsel. A careful survey of the cases relied upon by him shows that they do not support his proposition.

20. Mrs. Abha Rathore also attempted to draw attention of this Court to the cross-examination of the Principal of the School namely Veena Verma. Upon a perusal of the statement of Veena Verma, it cannot be inferred that merely because she was taking work of the concerned workman through a contractor, the workman would be deemed to become the employee of the principal employer.

21. For the foregoing reasons, the judgments cited by Mrs. Rathore and especially the judgment passed in the Secretary, Haryana State Electricity Board v. Suresh and Ors. (supra), and Husminbhai v. The Alath Factory Tezhilali Union and Others, (supra) cannot come to her assistance in view of the Constitution Bench judgment of the Hon''ble Supreme Court in the case of Steel Authority of India Limited and Ors. v. National Union Water Front Workers and Others (supra).

22. Mrs. Rathore also relies upon Paragraph 105 of SAIL's judgment (supra) and submits that this case falls under category (ii) referred to therein. Paragraph 105 of SAIL's case (supra) reads as follows:

105. An analysis of the cases, discussed above, shows that they fall in the three classes : (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the Courts have held that the contract labour would indeed be the employees of the principal employer."

I am afraid, the aforementioned submission of Mrs. Rathore cannot come to her assistance because in the instant case, there is no finding to the effect that the contract was either sham or nominal or that it was a camouflage, There is also no finding that such a contract was at a stage after the employment of contract labour had been prohibited by issuance of a notification u/s 10(1) of the CLR Act.

In the instant case, on the contrary, there is a clear finding to the effect that the concerned workman had worked under M/s. Continental Security Services from the period 1.7.1993 to 17.9.1993. This finding of fact is at Paragraph 14 infra of

the impugned award. Similarly, the other categoric finding is at Paragraph 15 of the impugned award which lays down that the appointment of the concerned workman with the management stands proved only w.e.f. 21.9.1993. If these be the findings, then the Labour Court must be said to have totally and completely misdirected itself by straight away coming to a conclusion in Paragraph 15 itself and that too, without any rationale and without any basis and also without advertent to the provisions of the CLR Act that "as regards service period of the workman for three months i.e. July to September, 1993 having worked through Continental Security Service, it has not been made out whether said engagement was legally permitted as no registration and licence of the contractor, have been produced on the file. So the workman is held in the job of the management in view of settled law w.e.f. 1.7.1993 itself [SIC].

Merely because registration or license of the contractor could not be produced on the file, the same did not confer upon the Labour Court a jurisdiction to hold that the workman was held to be in the job of the management. The Labour Court uses the words that the workman "is held in the job of the management in view of the settled law w.e.f. 1.7.1993 itself.

The Labour Court does not even say as to what is the settled law that he is referring to. It appears to this Court that having realised that the period rendered by the workman under the petitioner was less than 240 days, the Labour Court, for some reason or the other, and without any basis, stretched his jurisdiction too far and added the earlier period so as to be in a position to say that the workman had worked continuously from 1.7.1993 to 10.5.1994 under the petitioner thereby conferring on him the benefit of more than 240 continuous days. By doing so, he proceeded to confer upon him the benefit of Section 25-F of The Industrial Disputes Act, 1947 and directed reinstatement, back wages and continuity in service. In the opinion of this Court, the exercise resorted to by the Labour Court was not only unwarranted but it was clearly perverse and/or illegal.

For the foregoing reasons therefore, this Court is of the firm view that this Writ Petition must succeed and it is accordingly allowed to do so. As a consequence, the impugned award dated 15.3.2001 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad (respondent No. 1) in Reference Case No. 280 of 1994 by which he was pleased to order the reinstatement of the respondent No. 2 (concerned workman) together with back wages and continuity in service, is hereby set aside. In the facts and circumstances of this case, there shall however be no order as to costs.