
(1992) 08 AHC CK 0107

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18929 of 1987

U.P. State Electricity Board and Others

APPELLANT

Vs

Presiding Officer Labour Court and Another

RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 AWC 134 : (1992) 2 UPLBEC 1236

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : Tarun Agarwala, for the Appellant; P.C. Jhingan, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.—This writ Petition by the U.P. State Electricity Board it's establishment at Bareilly, challenges the award of the Labour Court, Bareilly, adjudicating reference No. 87 of 1986 in the matter relating to the workman Rakesh Kumar. The impugned award is dated 27th April, 1987, and appended as annexure "1" to the writ Petition.

2. The facts which are in issue and as noticed from the record of the Petition are that Rakesh Kumar worked as a tube well pump operator in Bareilly with the Board between the period 17th April, 1981 to 1st March, 1985. The facts in Issue are on record, The facts on which parties are at issue are that Rakesh Kumar was not the workman of the Hoard but had been engaged on duties as a tubewell pump operator through an independent contractor.

3. The pleadings of the Board before the Labour Court are sketchy and devoid of details. The written statement, of the Board dated 18th September, 1986 is annexure-3 to the Petition and the rejoinder statement dated 15 January 1987, annexure-5 to the Petition—Thus, whatever case the Board placed before the Labour Court as an employer was adjudicated upon. In the written statement the only pleading taken is that the Respondent workman discharged work through

the agency of an independent contractor, he was not in the employment of the Board, and the question of putting an end to his service does not arise. Beyond this, no facts have been given in the written statement. The rejoinder statement gives no details of the period of employment during which the contractor may have taken work from the workman concerned. Thus, the facts which were presented by the Board before the Labour Court were as vague as the pleadings of the employer.

4. The arguments made before the High Court were not taken in pleadings before the Labour Court, nor taken as submissions in the grounds of objection in the writ Petition. Never-the-less the Court has permitted the arguments to be raised as legal pleas. The contention is that as the workman was an employee of an independent contractor, his contract of service is regulated by the Contract Labour Regulation and Abolition Act, 1970 and consequently under the law, it is not open for this Court under Article 226 of the Constitution of India to look into the nature and duration of the contract. For this purposes cases were cited by learned Counsel for the Board. The one on which emphasis was laid, is the matter of *Dena Nath v. National Fertilizers Ltd.* 1992 (64) FLR 39 p> 5. The legal argument which has been developed can be considered by this Court provided a base has been laid by the Board as an employer in the pleadings before the Labour Court so as to suggest clearly and without doubt that its contention was a subject matter of consideration in the reference, under adjudication. These submissions on facts were not before the Labour Court.

6. The submission in effect, that matters relating to an employment of a workman by a contractor under the Contract Labour (Regulation and Abolition) Act 1979 can not be the subject matter of a fact finding enquiry on the relationship between master and servant under a Petition under Article 226, i.e. a writ Petition, is correct. But, the argument has been turned out of its context in reference to the case cited in *Dena Nath v. National Fertilizers Ltd.* (supra).

7. In the case cited at the Bar the facts were in fact being considered in a matter arising out of a writ Petition under Article 226, when they ought to have been adjudicated before an appropriate forum, thus, the decision in *Dena Nath v. National Fertilizers Ltd.* (supra). It is in this context that the Supreme Court observed "it is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work, in any establishment should be abolished or not."

8. The case before this Court is entirely on another context. The High Court, as a Court of first resort, is not examining the relationship of master and servant, as this aspect has already been all issue before the Labour Court and adjudicated.

9. Before any legal submission is considered by the Court, the facts on record must not be ignored and need to be kept in mind. If upon the totality of the circumstances, the award of the Labour Court can be sustained, then it would not be appropriate for the High Court to use a writ of certiorari only because another

view may be possible. The scope of writ of a certiorari while examining the decision of an quasi judicial tribunal is not to impose one view over another when the decision of a tribunal, under judicial review, may not be incorrect.

10. What are the facts on record?.

11. The facts on record reveal that between the period 17th April 1981 and 7 April 1982, it is the employer's case, reference annexure-10 to the Petition, that the workman did work as below on the following days.

17 April, 1981 to

30 April, 1981 13 days

May, 1981 31 days

June, 1981 30 days

July, 1981 31 days

September, 1981 30 days

October, 1981 31 days

November, 1981 30 days

December, 1981 31 days

January, 1982 31 days

February, 1982 28 days

March, 1982 31 days.

This comes to 317 days. If these facts are not to be ignored then on record continuous service" in Industrial adjudication has been discharged, during a calender year. Further, during this period it is the employer's case and is not disputed on record that the workman had discharged work with this employer and not under a contractor. If this be the case, the workman discharged continuous service during the aforesaid period and whether he had been engaged by a contractor or not. is not in issue nor could be made one as the work man discharged work for the Board.

12. If during any subsequent period the Board claims that the employer has changed, then this is change in the conditions of service which cannot be permitted and it is a change of employers as a camouflage which, this Court is afraid. Is unfair labour practise Once the record admits that continuous service has been discharged during the course of employment, a discharge will amount to illegal retrenchment.

13. On the pleadings of the parties, the Labour Court has noticed that the Board has failed to disclose the name of the contractor, but the workman discharged his work on the property of the Board. The Board could not identify the contractor.

The Board failed to discharge the burden that it was a contractor who was making payments to the workman when it was not able to furnish details as to who the contractor was. The contractor never appeared before the Labour Court. On an over all assessment of facts the Labour Court returned a finding that the workman concerned discharged continuous service on a work which was of a permanent nature and, in fact, the workman was not an employee of the contractor.

14. In these circumstances, when record speaks clearly that continuous service has been discharged on a work which is of a permanent nature, not casual or temporary, then the defence of an employment through a contractor was deplete of details, could not be proved and cannot be accepted by the High Court.

15. In these circumstances, this Court is of the view that there is no error in the impugned award of the Labour Court, Bareilly, manifest or otherwise nor it suffers from any illegality so as to occasion interference by a writ of certiorari.

16. The award stands. The Petition is dismissed with costs.