

(2012) 06 MAD CK 0148

In the Madras High Court

Case No : W.P.Nos. 35842 and 35843 of 2007

V. Kesavan and J. Augustine

APPELLANT

Vs

The Presiding Officer II Additional Labour Court Chennai
600104, Management of Audco India Limited and V.M.
Kamalesan

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 2(k), 2(l), 2A, 2A(2)

Citation : (2012) LLR 962

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Prakash, for Mr. V. Krishnamoorthy, for the Appellant; J. Sathyavathi for Mr. Meenakshi Sundaram for R2 and Mr. M.R. Dharani Chander for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. These two Writ Petitions are filed by two workmen challenging the two awards passed by the II Additional Labour Court, Chennai made in

I.D.Nos.699 and 700 of 1999 dated 30.4.2007 respectively. By the impugned awards, the Labour Court declined to grant any relief to the two

workmen in respect of their demand for employment as against the 2nd respondent management of Audco India Limited, but on the contrary

granted the reinstatement as against the 3rd respondent with 50% of the backwages and continuity of service and other attendant benefits. The two

Writ Petitions were admitted on 27.11.2007. On notice from this Court, the 2nd respondent has filed a counter affidavit dated "nil" (January

2012). The 3rd respondent Contractor has filed an affidavit dated 31.1.2012.

2. Since the petitioners have not filed the entire documents made available before the Labour Court, this Court directed the Registry to summon

the records filed before the Labour Court and accordingly they were summoned and circulated for perusal by this Court.

3. The stand of the 2nd respondent was that the 2nd respondent company is situated at Manapakkam, Chennai. It manufactures casting Valves at

different sizes for the Oil Industries. In the factory, there are around 800 workers. The petitioners were recruited by the 2nd respondent in the year

1989. After they rendered continuous service without any break, they were terminated from service on 22.4.1998. They were neither given any

written order of appointment nor any order of termination. According to both the petitioners, their services were integral to the part of

manufacturing process in the factory. The other workers, who are doing similar work, were employed on permanent basis. While the other

workers were paid monthly wages ranging from Rs.10,000/- to Rs.12,000/- per month, in the case of Kesavan, he was paid only at the daily rate

of Rs.115/- and in the case of Augustine he was paid only at Rs.85/- per day.

4. As against the stoppage of employment, both have raised an industrial dispute before the Conciliation Officer. The dispute was raised as against

the 2nd and 3rd respondents. The Conciliation Officer, after notice to the parties, gave a failure report. On the strength of the failure report, the

two petitioners filed a claim statement before the Labour Court. The 2nd respondent filed a counter statement dated "nil" (November 2000) and

the 3rd respondent filed a counter statement dated 9.11.2000.

5. Before the Labour Court, the workmen examined themselves as W.W.1 in respect of each I.D. On the side of the management, one V.K.

Malesan was examined as M.W.1 in both industrial disputes. The workmen filed ESI identity card as Ex.W.1. On the side of the management, 8

documents were filed and marked as Ex.M.1 to Ex.M.8 in both industrial disputes. In the case of Augustine, apart from ESI Identity card, he also

filed copies of his evidence in 2A petition as Ex.W.2.

6. The Labour Court after analysis of the evidence placed before it came to the conclusion that the workmen are really the workmen of the 3rd

respondent Contractor and they have no claim whatsoever with the 2nd

respondent management. The Labour Court held that there is no employer and employee relationship between the petitioners and the 2nd respondent and they are only casual workers under the 3rd respondent. At the same time, it did not agree with the 3rd respondent regarding the casual status of the workmen as reasons for their being terminated and on the other hand found that they were engaged for several years and identity card given by the ESI Corporation marked as Ex.W.1 in both I.Ds shows that they were covered by ESI. Therefore, stopping from work without complying with the provisions of the Section 25-F of the Act will make the order invalid.

7. In the counter filed by the 2nd respondent, the fact that the workmen in their evidence referred to the Contractor 3rd respondent as an employer was highlighted. It was also admitted by them that it is only the 3rd respondent, who employed them and he alone was paying them salary and that he did not file any document to prove that he was working from 1990.

8. The 3rd respondent in his affidavit had also stated that apart from the number of days in which the workmen worked in respect of each year, he also stated that he was a licensed Contractor and the two workmen were working directly under him. He also submitted that the Government rejected the reference in respect of the dispute raised by the contract workers for having referred for adjudication vide G.O.(D) No.67 Labour and Employment Department dated 31.1.2007. The said G.O was not challenged by the Union or by the Contract Labourers. Though he contended that the workers left the service on their own, in the absence of the 3rd respondent filing any Writ Petition challenging the award, those issues cannot be gone into in a Writ Petition filed by the two workmen. It is suffice to state that the award as against the 3rd respondent has become final.

9. Mr. V. Prakash, learned senior counsel appearing for the petitioner strongly contended that the 3rd respondent was examined as M.W.1. The 3rd respondent admitted that he himself was an employee for some time and therefore his being as an employer cannot be accepted. In any event he had stated that the contract is sham and nominal. Therefore, the workmen are entitled to relief of reinstatement as against the 2nd respondent.

10. Per contra, the learned counsel appearing for the 3rd respondent relied upon

the decision of the Supreme Court in the Workmen of The Food

Corporation of India Vs. Food Corporation of India, , wherein the Supreme Court held that the workmen employed by contractor cannot be the

workmen of third party who engages contractor to accomplish a particular result. In the present case, it is the admission of the workmen that they

were employed by the 3rd respondent and paid wages by the 3rd respondent. He was also a licence contractor. Therefore, these issues cannot be

gone into in a dispute u/s 2-A(2) of the Industrial Disputes Act. He further submitted that the dispute itself is raised against the principal

employer/2nd respondent as well as the Contractor, who is the real employer, namely the 3rd respondent.

11. He also referred to the judgment of the Supreme Court in Bharat Heavy Electricals Ltd., vs. Anil and others reported in 2007 (1) LLJ 619 for

contending that the Labour Court cannot direct reinstatement of the workmen as against the principal employer that too in a dispute u/s 2-A of the

Industrial Disputes Act. In paragraphs 13 and 15, it was held as follows:

13..... An individual dispute which is deemed to be an industrial dispute u/s 2-A concerns discharge, dismissal, retrenchment or termination

whereas an industrial dispute u/s 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of

deciding this case. In Radhey Shyam v. State of Haryana⁴ it has been held after considering various judgments of the Supreme Court that Section

2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial

dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(l) of the said 1947 Act]. Section 2-A does not

cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial

dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge,

dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave

facilities, etc.

15.....We set aside the impugned judgment of the High Court by directing BHEL to re-employ Respondents 1 to 14 directly or through its

contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the

Company after joining the recognised union/union concerned in the said reference. This order will not prevent the respondents herein from seeking

abolition of contract labour in accordance with law. Accordingly, the civil appeal is disposed of. No order as to costs.

12. The contentions raised by the learned counsel for the 3rd respondent is well founded. The Supreme Court vide its judgment in Steel Authority

of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., has held that if the contract is found to be not

genuine but mere a camouflage, the so-called contract labourer will have to be treated as employees of the principal employer. But if the contract is

found to be genuine and not prohibited u/s 10 of the Contract Labour (Regulation) Abolition Act, then a preference can be given for recruiting

those persons in the employment of the principal employer subject to several conditions of Rules of Recruitment being fulfilled.

13. But, in the present case, the workmen himself were not very clear about the real employer and at the time of raising a dispute, they have

impleaded both of them as party respondents and during the trial, the Labour Court had accepted the evidence of M.W.1, namely Contractor and

found that the claim against the 2nd respondent was not justified. In doing so, the Court also referred to the oral evidence in which the categorical

admission was made by the workmen about their relationship with the Contractor. Such a finding of fact cannot be interfered with by this Court,

that too in a dispute raised u/s 2-A of the Industrial Disputes Act. In the light of the above, both Writ Petitions stands dismissed. There will be no

order as to costs.