

(1995) 09 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Appeal No. 1500 of 1995

Van-Guard Ex-Servicemen Welfare Association and Another	APPELLANT
Vs	
State Trading Corporation and Others	RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 60 DLT 513 : (1996) 2 LLJ 897

Hon'ble Judges : Dr. M.K. Sharma, J; D.P. Wadhwa, J

Bench : Division Bench

Advocate : Surat Singh, Sumit Mand, A.K. Sikri and R.K. Agarwal, for the Appellant;

Judgement

M.K. Sharma, J.

(1) The petitioners have preferred this writ petition seeking for a writ of mandamus against the respondents directing them to pay the bare minimum wages to the members of the petitioner association and also to pay the outstanding wages. The petitioners have further sought for a direction to the respondents to treat the members of the petitioner association as the direct employees of respondent No. 1, State Trading Corporation as the State Trading Corporation is withholding the bonus and gratuity of the members of the petitioner association since 1990.

(2) The brief facts leading to this writ petition are that the services of the petitioner were sponsored by the Director General of Resettlement, Ministry of defense, respondent No. 3 as Security Guards to respondent No. 1, State Trading Corporation through the agency of Van Guard Detective & Fire Services on 18.4.1990. Since the services rendered by the members of the petitioner association were found to be satisfactory, an agreement was signed between the respondent No. 1 and respondent No. 2 namely - Vanguard Detective and Fire Services, for a period of 3 years from 1.1.1991 to 31.12.1994 which period came to be extended subsequently. The grievance that has been raised in this petition

is that the members of the petitioner association have not been paid the minimum wages which they are entitled to receive against their services.

(3) On a careful perusal of the writ petition we find that the petitioners have not "laid any factual foundation with regard to one of the prayers made in the writ petition to the effect that the direction be issued to the respondents to treat the members of the petitioner association as the direct employees in the State Trading Corporation for withholding the bonus and gratuity of the members of the petitioner association.

(4) The respondents have contested the writ petition by filing their counter affidavit disputing the allegations of the petitioners that minimum wages are not being paid to the petitioners.

(5) We have heard Dr. Surat Singh, who represented the petitioners, Mr. A.K. Sikri, representing the respondent No. 1 and also Mr. R.K. Aggarwal representing respondent No. 2.

(6) From the pleadings of the parties it is apparent that the services of the members of the petitioner association were being taken by respondent No. 1 through the respondent No. 2 w.e.f. 18.4.1990. It is however, not specifically stated in the writ petition that the services of the Security Guards in the establishment of respondent No. 1 is of permanent and/or perennial nature. So far as the allegation about the non-payment of minimum wages is concerned the same is disputed by the respondent No. 1 in their counter affidavit, stating inter alia that the members of the petitioner association are being paid minimum wages in accordance with law. Apparently, Therefore, the issue involves disputed questions of fact. The scheme of the Minimum Wages Act has provided for specific remedy for recovery of minimum wages in case such minimum wages are not paid to any workman. Since the issue in respect of non-payment of minimum wages to the members of the petitioner No. 1 raised in the present case involves disputed questions of fact and involves investigation into disputed questions of fact we are not inclined to determine the same in the present writ proceedings. In our opinion the Forum provided for under the provisions of the Minimum Wages Act for redressal of the grievance of the petitioners would be the appropriate forum for the petitioners to seek such remedy. So far as the other prayer with regard to absorption of the members of the petitioner in the principal establishment of the respondent. No. 1 is concerned, it is noticed, as stated earlier, that no factual foundation has been laid by the petitioners in the writ petition. The petitioners in the writ petition have not even stated that the services of the Security Guards in the establishment of the respondent No. 1 is of permanent or perennial nature nor has it been stated that the members of the petitioner No. 1 have direct connection with the respondent No. 1 and that all of them have been continuously and without any break working as Security Guards in the establishment of the respondent No. 1. In the absence of any material particular in respect of such claims in the writ petition, it is not possible for us to decide such question of facts in our writ jurisdiction. In R.K. Panda and Others

Vs. Steel Authority of India and Others, the Supreme Court has held in paragraph 6 thereof that normally the Labour Court and the Industrial Tribunal under the Industrial Disputes Act are the competent For a to adjudicate such disputes on the basis of the oral and documentary evidence produced before it.

(7) Our attention has been drawn to another decision of the Supreme Court in the case of Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, wherein it has been held thus:

"THERE is nothing in the Act, which has either expressly or impliedly taken away the raising of an industrial dispute to absorb the ex-contractor's workmen in the principal establishment when the dispute has been espoused by the direct workmen or the jurisdiction of the Tribunal to give a direction for the purpose, of course, on such terms as it deems fit in the circumstances of each case." In the said case the Hon"ble Supreme Court held that "the remedy of the workmen is to raise a proper industrial dispute as indicated earlier for appropriate reliefs. If and when such dispute is raised, the Government should make the reference."

(8) In this connection, we may refer to another Supreme Court decision in the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, wherein the Supreme Court held thus :

"THE reference to the Labour Court/ Industrial Tribunal could be as to whether it is necessary for the management to employ contract labour directly or indirectly; a question can as well be referred whether the engagement of contract labour was bonafide or it was a camouflage. In appropriate cases in industrial adjudication appropriate directions can be given to the principal employer in this behalf."

(9) In the light of the aforesaid authoritative decisions of the Supreme Court, we feel that in the present case the proper remedy of the petitioners would be to raise a proper dispute before the appropriate For a appropriate reliefs and/or to seek remedy under the appropriate Statute for the reliefs sought for in this writ petition. With the aforesaid observations and directions this writ petition stands dismissed. We however, make no order as to costs.