

(2023) 08 JH CK 0058

In the Jharkhand High Court

Case No : Latter Patent Appeals No. 177 Of 2021

Workmen

APPELLANT

Vs

Employers In Relation To Management Of Burragarh Colliery
And Others

RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 08 JH CK 0058

Hon'ble Judges : Shree Chandrashekhar, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Jageshwar Mahto, Anoop Kumar Mehta, Manish Kumar

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. The workmen through Bihar Mine Lal Jhanda Mazdoor Union Sri Ram Bali Ram have challenged the order dated 2nd December 2020 passed in W.P(L) No.7977 of 2012.

2. In the aforesaid order dated 2nd December 2020, the writ Court has made the following considerations:

"7. Be that as it may, having heard the rival submissions of the parties and upon perusal of the documents brought on record, this Court is of the considered view that no case is made out for interference in the Award dated. 03.01.2012, for the following facts and reasons:

I) The petitioner failed to prove the fact that they were engaged by the management of BCCL by constituting a Co-operative Society in the year 1989. The Hon'ble Apex Court in case of General Manager (OSD), Bengal Nagpur Cotton Mills Vs. Bharat Lal and Anr., reported in (2011) 1 SCC 635 has held that it is for the workmen claiming employer-employee relationship are to aver and

prove that they were paid salary directly by the principal employer and not by the contractor. Since the petitioner did not discharge this onus and did not establish that the concerned workmen were working directly under the control and supervision of the management of BCCL, the Tribunal has rightly held that the concerned persons were not the direct employee of the respondents.

The Hon'ble Apex Court in case of General Manager (OSD), Bengal Nagpur Cotton Mills Vs. Bharat Lal and Anr. (supra), held that two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are-

(a) Whether the principal employer pays the salary instead of the contractor?

(b) Whether the principal employer control and supervises the work of the employees.

In the instant case on both these counts, the petitioner has failed to establish its case.

II) Further it is crystal clear that the co-operative workers were engaged in miscellaneous jobs such as, carrying materials, making stopping work, cleaning jobs as and when required and the concerned workers of the cooperative society were engaged on the requisition issued to the Secretary of the Co-operative society. The petitioner's witnesses failed to establish that the concerned workmen worked directly under the management. The Union also failed to produce the Identity Card of any of the workmen either issued by the Co-operative Society or by the Management for doing the jobs of the management. Further, no receipt of payment of salary has been produced by the workmen which could establish the fact that the salaries were paid by the management.

III) It is well settled law that findings of facts recorded by a Tribunal requires no interference under Article 226 of the Constitution of India.

The Hon'ble Apex Court in case of Syed Yakoob Vs. K.S. Radhakrishnan, reported in AIR 1964 SC 477 has held that a writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. Orders passed by inferior Courts or Tribunal, which are without jurisdiction or are in excess of it, fail to exercise jurisdiction a writ of certiorari can be issued. Where the Tribunal exercise jurisdiction illegally or improperly or the procedure adopted in dealing with the dispute is opposes to principles of natural justice, a writ under Article 226 of Constitution can be issued.

Similarly, the Apex Court in case of Sawarn Singh Vs. State of Punjab, reported in (1976) 2 SCC 868 has held that a finding of fact recorded by an inferior Tribunal, writ of certiorari can be issued only if, while recording such a finding, the Tribunal has acted on no evidence or has refused to admit admissible evidence or if the findings are not supported by any evidence at all. In such cases, the error amounts to an error of law."

3. In Reference Case No.38 of 1995, the Central Government Industrial Tribunal No.1 at Dhanbad (in short, "Tribunal") was required to adjudicate the dispute referred in the following terms:

"Whether the demand for regularization of S/Shri Suresh Paswan and 45 other (as per list enclosed) Co-operative Workers by the Management of Burragarh Colliery, Area No.VIII of M/s BCCL is legal and justified? If so, to what relief those workmen are entitled and from which date?"

4. Before the Tribunal, three witnesses were examined on behalf of the workmen who admitted in the cross-examination that they were engaged by Shramik Sahayog Samity and were paid wages by the Samity. Krishna Paswan who was examined on behalf of the workmen as WW3 admitted before the Tribunal that no Identity Card was issued to him by the Management of M/s BCCL and, that, he cannot produce any evidence as regards wages paid to him by M/s BCCL.

5. In the aforesaid circumstances, the Tribunal after bestowing its attention to the judgments in "Official Liquidator v. Dayanand & Ors" (2008) 10 SCC 1, "Employers in relation to the Management of Bhagabandh Colliery of PB Area No.VII of Bharat Coking Coal Ltd. v. Presiding Officer, Central Government Industrial Tribunal" 2008 (1) JCR 135, "Employers in relation to Management of Hurladih Colliery of Bhalgora Area v. Their Workmen represented by Secretary, Janta Mazdoor Sangh" 2008 (1) JCR 378 and "Pinaki Chatterjee and Ors. v. Union of India & Ors." (2009) 5 SCC 193 held that the workmen could not prove that they were working directly under the Management and they also failed to establish that they were engaged through Shramik Sahayog Samity on behalf of M/s BCCL.

6. A writ Court exercising powers under Article 226 of the Constitution of India shall not interfere with the order passed by the inferior Tribunal at least on the question of fact. In "Syed Yakoob v. K.S. Radhakrishnan" AIR 1964 SC 477 the Hon'ble Supreme Court has held that wherever there is an attempt to reopen the evidence laid before the inferior Tribunal a certiorari shall not lie. The findings recorded by the Tribunal are not under challenge by producing such indisputable materials on the basis of which it can be said that the Award suffers from patent illegality or perversity.

7. In our opinion, the writ Court has rightly declined to interfere with the Award dated 3rd January 2012 made in Reference Case No.38 of 1995.

8. Therefore, we do not find any ground to interfere in this matter, and, accordingly, L.P.A No.177 of 2021 is dismissed.