

Bibhucharan Dutta And 15 Ors Vs Management Of Oil And Natural Gas Corporation Ltd. And 4 Ors

Court: Gauhati High Court

Date of Decision: Nov. 21, 2023

Acts Referred: Constitution Of India, 1950 – Article 226
Industrial Disputes Act, 1947 – Section 12(5)

Hon'ble Judges: Suman Shyam, J

Bench: Single Bench

Advocate: R Kalita , G N Sahewalla

Final Decision: Dismissed

Judgement

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1. Heard Mr. B. D. Konwar, learned senior counsel assisted by Mr. J. Singh, learned counsel appearing for the writ petitioners. I have also heard Mr.,,,

G. N. Sahewalla, learned senior counsel assisted by Ms. B. Baishya, learned counsel representing the respondents.",,,

2. This writ petition is directed against the Award dated 31.05.2013 passed by the learned Central Government Industrial Tribunal "cum- Labour,"

Court, Guwahati in connection with Reference Case No.3/2008 answering the Reference in the negative and against the writ petitioners.".,,,

3. The facts of the case, in a nutshell, are that the 16 writ petitioners herein claim to be part of the 223 group of contingent workers who were",,,

members of the ONGC Field Party Contingent Workers Association (herein after referred to as the Āĉâ-ĒœĀssociationĀĉâ-â.ĉ). The members of the...

aforesaid association claim that they had rendered more than 240 days of continuous work in a period of 12 calendar months and also possessed the...

minimum prescribed qualification and therefore, were entitled to be regularized in service as per the provisions of the
 Āçâ,-Ā“Certified Standing Orders”,,,

for Contingent Employees of the ONGC. When the management of the ONGC had failed to act on their request for regularization of service, ",,

intervention of the Regional Labour Commissioner (C) was sought in the matter and the matter was accordingly, entrusted to the Assistant Labour",,,

Commissioner (C) so as to explore the possibilities of an amicable settlement of the dispute by and between the Association and the Management of,,,

the ONGC. The conciliation proceeding, however, ended in failure. Thereafter, the Management of ONGC had issued advertisement notice dated",,,

11.11.1997 inviting bids for engagement of contract labourers. Aggrieved by the said advertisement notice, the Association had approached this Court",,,

by filing Civil Rule No.5744/1997 which was disposed of by the learned Single Judge by the Judgment and Order dated 15.09.1998 inter-alia directing",,,

the Secretary to the Government of India, Ministry of Labour to pass an order under sub-section (5) of section 12 of the Industrial Disputes Act, 1947",,,

on the failure report dated 27.10.1997 submitted by the Assistant Labour Commissioner (C), Dibrugarh and communicate the decision to the",,,

concerned parties. Pursuant to the Judgment and Order dated 15.09.1998, the matter was examined by the Labour Ministry whereafter, vide letter",,,

dated 28.10.1998 the Ministry had communicated its opinion by stating that since the concerned workers are contingent/casual workers hence, their",,,

claim for regularization of service was not valid. The Association had, thereafter, assailed the letter dated 28.10.1998 by filing Civil Rule No.6771/1998",,,

before this Court, which was disposed of, by the, Judgment, and, Order, dated, 30.03.2005, setting, aside, the impugned letter",,,

with a further direction upon the Government of India, Ministry of Labour to refer the claim of the members of the Association to the Industrial",,,

Tribunal. The order dated 30.03.2005 was taken in an appeal by the Management of the ONGC in the form of Writ Appeal No.351/2005, which was",,,

dismissed by the Judgment and Order dated 14.11.2006. An SLP was thereafter, preferred by the Management before the Supreme Court, which was",,,

disposed of by the order dated 10.11.2008 with a direction that the cases of the workers i.e. the members of the Association, for regularization of their",,,

services, be referred to the Central Government Industrial Tribunal, Guwahati. In terms of the aforesaid order of the Supreme Court, a reference",,,

being Reference Case No.03/2008 was registered before the Central Government Industrial Tribunal " cum-Labour Court, Guwahati with the",,,

following schedule :-",,,

"Whether the demands of ONGC Field Party Contingent Workers Association, namely, i) for restraining the management of ONGC from",,,

introducing contract labour for contingent work and to allow contingent work to be performed by the members of their Union, ii) Quashing the tender",,,

notice No.ER/MM/GSD/39/97-98 issued by the Dy. GM (MM), Exploration Business Group, ONGC, Sibsagar, Assam and iii) to enforce the certified",,,

Standing Orders relating to regularization of 223 contingent workers, are just and legal?",,,

If so, what directions need to be issued and to what relief the 223 workers are entitled to?"",,,

4. Upon receipt of the notice in connection with the aforesaid Reference Case, the Association as well as the Management had appeared and",,,

contested the reference case by filing their respective claim statement/written statement. Both the parties had also adduced evidence. Eventually the,,,

learned Industrial Tribunal had passed the impugned Award dated 31.05.2013 answering the Reference in the negative. The Award dated 31.05.2013,,,

has been assailed in the present writ petition wherein the petitioners have also prayed for a writ of mandamus directing the respondents to regularize,,,

their services.,,,

5. Mr. B. D. Konwar, learned senior counsel appearing for the writ petitioners has primarily assailed the impugned Award by taking the plea of",,,

perversity inter-alia contending that while the learned Tribunal has discussed the evidence adduced by the Management, no such exercise was",,,

undertaken with regard to the evidence tendered by the Association. It is also the submission of Mr. Konwar that as per the law laid down by the,,,

Supreme Court in the case of Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda reported in (2010) 1 SCC 47 the burden to",,,

prove that the workers have not worked for 240 days at a stretch in 12 calendar months lies with the management and in the present case, since the",,,

Management has failed to produce the Muster Roll as well as the Attendance Register, this is a clear case where the Management had failed to",,,

dislodge the claim of the petitioners that they had worked continuously for a period of more than 240 days in 12 calendar months so as to justify their,,,

prayer for regularization in service.,,,

6. Mr. G. N. Sahewalla, learned senior counsel for the respondents (Management), on the other hand, submits that the members of the Association",,,

including the petitioners herein were "seasonal" contingent workers and they had never worked for 240 days in one calendar year. Moreover",,,

these contingent workers also did not possess the requisite qualification permitting regularization of their service and therefore, the question of",,,

regularization of service of the writ petitioners as per the Certified Standing Order did not arise in the eyes of law. Defending the impugned Award,,,

Mr. Sahewalla has further argued that the learned Tribunal has taken note of the sum total of evidence produced before it and has recorded,,,

categorical finding of facts on the basis of such evidence to hold that members of the workers Association had failed to establish their claim of having,,,

served continuously for more than 240 days in one calendar year. Therefore, submits Mr. Sahewalla, there is no scope for interfering with the",,,

impugned award.,,,

7. By referring to the decision of the Supreme Court rendered in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and,,,

another reported in (2004) 8 SCC 161 Mr. Sahewalla has argued that once the Management has denied the claim of the workers, it was incumbent",,,

upon the workers to lead evidence to show that they had in fact worked upto 240 days in a year preceding their termination. However, the petitioners",,,

have failed to lead such evidence in the present case. As such, the findings recorded by the learned Tribunal in the impugned Award do not call for",,,

any interference by this Court.,,,

8. By referring to another decision of the Supreme Court rendered in the case of Indian Overseas Bank and others Vs. Om Prakash Lal Srivastava,,,

reported in (2022) 3 SCC 803 Mr. Sahewalla has argued that the scope for the Writ Court to entertain a challenge against an Award of the learned,,,

Tribunal, in exercise of jurisdiction under Article 226 of the Constitution of India, is very limited and unless there is a jurisdictional error or violation of",,,

principles of natural justice, the High Court wouldÃ, not be justified in entering into the controversy on merits acting as an appellate court." ,,,

9. I have considered the rival submissions made at the bar and have also gone through the materials available on record.,,,

10. At the very outset, it deserves to be noted herein that although there were 223 contingent workers who were part of the Ãçâ,~Ã"AssociationÃçâ,~ when",,,

Sl.

No.",Name,Tenure,G.P. No.

,,,

1,Bibhucharan Dutta,1995 to 1997,34

2,Bipul Bhuyan,1994 to 1997,33

3,Suren Chutia,To 1997,33

4,Rabin Borgohain,1989 to 1997,33

5,Sajadul Hussain,1995 to 1997,33/34

6,Mahendra Saikia,1991 to 1997,23

7,Suresh Bora,1994 to 1997,34

8,Jitu Dutta,1994 to 1997,23

9,Pulin Ch. Dutta,1989 to 1997,33

10,GokulÃ, Mili,1994 to 1997,88

11,Ramesh Gogoi,1989 to 1997,33

12,Tonkeswar Saikia,1994 to 1997,33

13,Rikheswar Kachari,,33

14,Ananta Kalita,1991 to 1997,92

15,Probin Ch. Borah,1984 to 1985,33/34

16,Mohendra Saikia,1984 to 1997,33

Further in Exhibit-N(13), the certificate issued by the Party Chief of G.P-23 in the name of the workman Nogen Borah, it appears that there are some",,,

over writing/manipulation in the date from 2.11.84 to 30.6.85 showing 240 days but this document can not be accepted due to doubts as to its genuinity",,,

so the workman Nogen Borah is not found to have established that he had completed 240 days of work. The Exhibit-N(14), the Identity Card issued in",,,

the name of Ratul Dutta for the period valid upto June, 1996 and in the Exhibit-N(15), the Identity Card issued against the said Ratul Dutta on 1.7.96",,,

but both the Identity Cards do not mention the period of employment. The Identity Card marked as Exhibit-N(16) issued in the name of Pradip Bora",,,

for the field season 1994-95 also does not contain any date of engagement. In Exhibit-N(17), the Memorandum issued in the name of workman Pradip",,,

Bora shows the period of engagement with effect from 1.11.1995 to 30.6.1996 while in page 35 of Ext-1 the date of engagement has been shown with",,,

effect from 1.12.95 to 30.6.95 thus both the Exhibit-N(17) and page 35 of Exhibit-1 are found not the same in respect of the date of engagement",,,

Further in Exhibit-N(17) the date, 1.11.95 appears to have been fabricated/tempered as such, the document marked as Exhibit-N(17) cannot be",,,

accepted. Exhibits-N(18), N(19) are the Identity Cards in respect of the workman Amrit Kotoky and Torun Bora but these Identity Cards also",,,

appears to have been over written. Exhibit-N(20) to Exhibit-N(22) are the Identity Cards in respect of the workmen Gajen Hazarika issued on",,,

2.11.93. These Cards also do not reflect the period of work. Exhibit-N(23) appears to be the Identity Card in respect of workman Sushil Lahon but",,,

there is no mention of the period of service. The Exhibits-N(24) & N(25) are the Identity Cards in the name of workman Horeswar Boro but there is",,,

no mention of the period of working days. Exhibits-N(26) and N(27) are Identity Cards issued in favour of the workman Profullo Bora issued on",,,

1.11.95 and 11.11.96 respectively but there is nothing to show as to the working period. Exhibit-N(28), n(29) are the Identity Cards in respect of the",,,

workman Abony Gogoi and Robin Neog where there is no mention of the working period. Exhibit-N(30) to Exhibit-N(32) are the Identity Cards in",,,

respect of the workmen Girin Baruah, Bidyut Baruah and Jayanta Kalita showing the validity of the issue of the Identity Card for the period 03.11.95",,,

to 30.6.96, 01.11.95 to 30.6.95 and 03.12.94 to June, 95 respectively but there appears to be some over writing/manipulation in the dates mentioned",,,

above. These Identity Cards also do not specifically mentioned the period of working days and hence, these are not acceptable. Exhibit-N(33), N(35),,,,

N(36), N(38), N(39) to n(40), N(44), N(49), N(66), N(71) are the memorandum issued in favour of the workmen Puneswar Borah, Prahlad Neog, ,,,

Prafulla Saikia, Rabul Neog, Biman Saikia, Devon Prasad Baruah, Ajit Gohain, Ridip Borah, Ratul Sarmah and Mahendra Saikia respectively, but on" ,,,

scrutiny it is seen that the dates of working period are found tempered/fabricated in all cases and hence, these documents cannot be accepted." ,,,

Exhibit-N(34) is the Identity Card issued in favour of the workman Ajay Phukan but there is no mention of the working period. Exhibit-N(37), N(41) to" ,,,

N(43), n(47), n(48), N(50), N(52), N(54) to N(59), N(63)to N(65), N(67)to N(70), N(74), N(77), N(79), N(80)to N(88), N(90), N(92), N(93) N(95)to" ,,,

N(102), N(107) and N(108) are Identity Cards issued in favour of the workmen Romen Bora, Nirmal Neog, Ashok Bora, Dibeswar Chutia, ,,,

Budheswar Dwora, Tankeswar Saikia, Rajen Bora, Pulin Dutta, Robin Borgohain, Romesh Gogoi, Bipul Bhuyan, Robi Borah, Rikeswar Kochari, ,,,

Nipul Saikia, Suresh Bora, Bibhu Charan Dutta, Nayan Borah, Jitu Dutta, Romen Saikia, A. Kalita, Tapal Bora, Ranjit Bora, Anil Kochari, Bipul" ,,,

Dwara, Amulya Regon, Ridip Gogoi, Prabin Nagaria, Jogeswar Mili, Gokul Mili, Dul Borah, Rajib Saikia, Ajit Dutta, Ranjit Kr. Saikia, Pranab Gogoi, ,,,

Tapan Kakoti, Bipin Gogoi, Mridul Gogoi, Dulu Bhuiya, Pabitra Dutta, Sujadul, Puna Gogoi, Ranjit Rajkonwar, Makhon Neog, Pradip Bora, Nabajyoti" ,,,

Bora, Padma Bora respectively. On examination of these documents it is found that in most of the Identity Cards the dates of validity are found" ,,,

tempered and fabricated on the face of those and in some of the documents the exact period of validity have also not been mentioned. In such a ,,,

situation neither the aforesaid documents can be admitted nor any opinion be formed in respect of the period of working of the aforesaid workmen. ,,,

The Association has relied upon Exhibit-N(51) which is a list of off season workers issued by the Party Chief of GP-33 it does not reflect any working ,,,

days. Exhibit-N(60), is a certificate issued in favour of the workman Prabin Ch. Borah but there is no mention of period of work. The Exhibit-N(61) is" ,,,

an experience certificate issued in the name of the workman Suren Chutia showing the date of working with effect from 9.11.84 to 15.7.85 but this ,,,

certificate has been written in different hand writing with different ink also, as such, this certificate is also found doubtful. The Exhibit-N(62) is a" ,,,

certificate issued in favour of the workman Suren Chutia but the said certificate is found having without any office seal as such, this so called" ,,,

experience certificate cannot be accepted. Exhibit-N(72) is also a certificate issued by the Party Chief of G.P.-36 in favour of Tankeswar Saikia and ,,,

this certificate also does not indicate any period of work. The Exhibit-N(73) a list of workers who were engaged during the off season in 1996 but,,,

there is no specific mention of period of engagement.,,,

The Association has also exhibited the Affidavits marked as Exhibit-N(91) & N(94) sworn in by Sri Pranab Gogoi and Sri Thaneswar Gogoi stating,,,

that they are known as Bhogeswar Gogoi and Bepen Gogoi respectively without having any relevancy with the list of workers as mentioned in the list,,,

appended with their claim statement and hence these two documents are also found of no help to the Association in connection with the calculation of,,,

working days. The workman Witness No.1, Sri Jitumoni Bora in his evidence clearly mentioned that altogether 87 numbers of workers have",,,

completed 240 days of work within the relevant period of consecutive 12 months but the supporting documents are found not at all the acceptable and,,,

reliable as observed above. In his cross-examination he admitted that they have submitted a Writ Petition filed in Civil Rule No.5744/97 vide Exhibit-1,,,

wherein Exhibit-1(21) is his signature. He also admitted the discrepancies made in some of the entries in regard to the working period mentioned in the,,,

documents annexed with Exhibit-1 and those proved by him vide Exhibit-N(1) to Exhibit-N(109). He categorically mentioned that he cannot say who,,,

have manipulated the said documents marked as Exhibit-N(1) to Exhibit-N(109). Thus it is crystal clear that the documents proved by the Association,,,

vide Exhibit-N(1) to N(109) are found not acceptable in order to establish the plea in order to justify their claim that all the workmen have completed,,,

240 days of service in 12 consecutive months on the strength of the documents marked as Ext-N series.,,,

The Management Witness No.1 Sri Amit Kumar Khulbe in his deposition categorically stated that the seismic survey work is conducted in selected,,,

field which begins towards beginning of November and ends before the end of June next year; and one of the workers have completed 240 days in a,,,

year. He also denied that all the workers mentioned in the Annexure-A to the written statement submitted by the Association were not the workers of,,,

the said Association and most of them did not work as contingent worker in ONGC since 1994. In support of his contention the management witness,,,

No.1 has submitted the Field Report of CDP seismic Survey vide Exhibit-5 (proved in original) for the field season 1992-93, Exhibit-6 (proved in",,,

original) is the operational report on 24/48 Fold CDP Reflection Survey for the season 1984-85; Exhhbit-7 (proved in original) is Operational Report,,,

on 48 Fold CDP Seismic Survey for the field season 1992-93; Exhibit-8 (proved in original) is the operational report on 48 Fold CDP seismic reflection,,,

survey for the field season 1993-94; Exhibit-9 (proved in original) the operational report on 48 Fold CDP seismic Reflection Survey for the field season,,,

1994-95; Exhibit-10 (proved in original), the operational report on 48 Fold CDP Reflection Survey for the field season 1994-95; Exhibit-11 (proved in",,,

original), the operational report on 48 Fold CDP Seismic Survey for the field season 1991-92; Exhibit-12 (proved in original), operational report on 48",,,

Fold CDP Reflection Survey for the field season 1994-95. From the Exhibit-5 to Exhibit-12, it appears that the field season started on 4.11.92 and",,,

closed on 2.5.93; from 14.11.84 to 4.6.85; from 20.11.92 to 14.5.93; from 1.11.93 to 30.5.94; from 11.11.94 to 29.6.93; from 11.11.94 to 27.6.95; from",,,

17.10.91 to 27.5.92 and from 11.11.94 to 28.6.95 respectively. He also stated that the gate passes are issued to the workers for various purposes and",,,

the same are issued to the outsiders and the gate passes annexed by the Association in the Written Statement are over written, tempered and as such",,,

fabricated. The Management witness No.2 Shri Ram Chandra Mishra categorically pointed out that he was posted as Party Chief in ONGC, Jorhat",,,

with effect from May, 1993 to December, 1994 and was transferred to Kolkata office on 29.5.95 and hence the signature contained in Annexure-N/1",,,

of Exhibit-a is his own signature but the dates are manipulated. He also said that the period of service in Annexure-N/1, N/36 are also manipulated." ,,,

From the discussion of evidence of workman witness No.1 and Management witness No.1 & 2 as regards period of 240 days of work in 12",,,

consecutive months in respect of the workmen as claimed by the Association it is revealed that the document marked as Exhibit-N(1) to Exhibit",,,

N(109) which are the solitary supporting testimony relied upon by the workers Association are not admissible in law and even the testimony of W.W.",,,

1 is found not reliable. Moreover, all the documents marked as Exhibit-N(1) to Exhibit-N(109) are found not genuine, trustworthy and free from",,,

doubts. On the other hand, the evidence of the Management witness is found untwisted unshaken rather supported by the documents relied upon by",,,

him.Ã¢â¬â",,,

14. From a careful reading of the impugned award passed by the learned Tribunal, more particularly paragraph 10 thereof, this Court finds that the",,,

conclusion drawn by the Industrial Tribunal that the Contingent Workers Association had failed to establish their claim of having completed 240 days",,,

of work within 12 consecutive months is based on proper appreciation of evidence produced by both the sides before the learned Tribunal. As a",,,

matter of fact, the learned Tribunal has found that some of the documents produced by the workman in support of their claim to have worked for 240",,,

days in a period of 12 calendar months were tampered and hence, appeared to be fabricated rendering them unworthy of any credence. The rest of",,,

the documents produced on record, more particularly the Exhibit- N-series were not sufficient to establish the claim of the workmen. The above",,,

finding of facts appears to be consistent with the materials on record. Therefore, this Court is unable to agree with the submission of Mr. Konwar that",,,

the decision and conclusion of the learned Tribunal is vitiated by perversity.,,,

15. In so far as the other grounds urged by Mr. Konwar that the burden to prove that the members of the Association had not worked for 240 days,,,

over a period of 12 calendar months was with the Management, which burden they had failed to discharge and that the failure to produce the Muster",,,

Roll and Attendance Register by the Management of ONGC before the learned Tribunal must lead to the adverse presumption being drawn against,,,

the Management of ONGC, this Court is of the view that drawing such an inference would also be wholly impermissible in the facts and",,,

circumstances of the present case for the following reasons. Firstly, the petitioners or for that matter, the members of the "workers Association",,,

had never made any request or prayer before the learned Tribunal for issuing any direction to the Management to produce the Muster Roll and,,,

Attendance Register so as to establish their claim and therefore, they cannot be allowed to now take such a plea before this Court. Secondly, the",,,

question of shifting of onus of proof upon Management to show that the contingent workers had not worked for 240 days in 12 consecutive calendar,,,

months would arise only if the workers succeed in producing cogent materials to prima-facie establish their claim. However, as has been noted above,",,

in the present case, the materials were insufficient to prima-facie establish their claim before the Tribunal.",,,

16. The decision in the case of Director, Fisheries Terminal Department (supra) relied upon by Mr. Konwar was rendered in a completely different",,,

fact situation where, the service of the workmen was retrenched in the year 1991 and during the period between 1985 to 1991 he had worked for",,,

more than 240 days. In the said decision it was held that the burden of proof was on the workman to show that he had worked for 240 days in the,,,

preceding 12 months prior to his alleged retrenchment. By taking note of the difficulty faced by the workman in having access to all the official,,,

documents, Muster Roll etc. in connection with his service, the Apex Court had observed that since he had come forward and deposed, hence, the",,,

burden of proof shifts upon the employer to prove that the workman did not complete 240 days of service in the requisite period so as to constitute,,,

continuous service. As has been noted above, the documents relied upon by the members of the Association has been found to be insufficient to",,,

support their claims of having rendered 240 days of continuous service in 12 calendar months. After considering the materials on record, this Court is,",,

therefore, of the opinion that the writ petitioners had failed to prima-facie establish their claim. Therefore, the ratio laid down in the aforesaid decision",,,

cited by the petitioners. The counsel would be of no assistance to him in this case.,,,

17. In the case of Indian Overseas Bank and others (supra), the Supreme Court has categorically held that while examining the validity of an award",,,

passed by the learned Industrial Tribunal, it would not be permissible for the Writ Court, in exercise jurisdiction under Article 226 of the Constitution of",,,

India, to enter into the merit of the controversy by acting as an appellate court. In other words, while entertaining a challenge to an award passed by",,,

the learned Tribunal, this Court, in exercise of jurisdiction under Article 226 of the Constitution, would not embark upon an exercise of re-appreciating",,,

evidence and arriving at a different conclusion so as to reverse the judgment and award passed by the learned Industrial Tribunal. Once it is found that,,,

the conclusion of the learned Tribunal is based on proper appreciation of cogent materials placed on record, it would not be permissible for the Writ",,,

Court to act as an appellate court and overturn the findings of the Tribunal even if two views are possible in the matter.,,,

18. This Court is also conscious of the fact that the writ petitioners herein had been disengaged way back in the year 1997 and although they have,,,

been seeking redressal of their grievance by instituting different legal proceedings from time to time, yet, it would be highly impracticable to consider",,,

their prayer for adducing fresh evidence in support of their prayer. If such a prayer was to be considered at this stage, even then, the matter would",,,

have to be remanded back to the learned Tribunal for adducing fresh evidence, which exercise, at this point of time, in the opinion of this Court, would",,,

be wholly unwarranted.,,,

19. For the reasons stated herein above, this Court is of the opinion that there is no good ground for this Court to interfere with the impugned Award",,,

dated 31.05.2013. The writ petition is, therefore, held to be devoid of any merit. The same is accordingly dismissed.",,,

Parties to bear their own cost. Send back the LCR.,,,