

(2007) 03 GAU CK 0017

Gauhati High Court

Case No: None

Management of
Assam State Electricity
Board

APPELLANT

Vs

Industrial Tribunal
and Another

RESPONDENT

Date of Decision: March 6, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226, 38, 39, 42, 43
- Industrial Disputes Act, 1947 - Section 10, 12, 7

Citation: (2007) 115 FLR 92 : (2007) 2 GLT 899 : (2008) 1 LLJ 213

Hon'ble Judges: Amitava Roy, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amitava Roy, J.

The challenge is directed against the award dated March 31, 2006, of the Industrial Tribunal, Guwahati, Assam (hereafter also referred to as the "Tribunal"), passed in Reference Case No. 2 of 2003, directing the petitioner-management to reinstate the workmen involved, if found eligible and fit for their jobs with all back wages.

2. I have heard Mr. B.D. Das, learned Standing counsel Assam State Electricity Board (hereafter also referred to as the "Board") for the petitioner and Mr. A. Dasgupta, learned Counsel for respondent No. 2.

3. Before advertng to the rival versions, the terms of the reference u/s 10(1)(d) of the Industrial Disputes Act, 1947 (hereafter for short the "Act"), contained in the related notification No. GLR/206/2002/34-K, dated December 13, 2002 for adjudication by the learned Tribunal, are extracted hereunder:

Schedule-

(1) Whether the Management of ASEB. Chandrapur Thermal Power Station, Chandrapur, Guwahati-50 is justified in issuing the notice to the Mazdoor Kalyan Samity where the services of Shri Lakhi Kanta Das and Other 36 (thirty six) workmen (list enclosed as stated above) have been effected even after continuous services in perennial nature of job since 1989 to May 31, 2002?

(2) If not, whether their services should be regularized and reinstated with all benefits with retrospective effect?

(3) If not, what relief they are entitled to?

4. The pleaded case of the Assam Thermal Power Mazdoor Union, espousing the cause of the persons affected is that it is a registered union, whereof all the employees of the Board are members. The 37 workmen figuring in the dispute, served the Chandrapur Thermal Power Station of the Board continuously since 1989 as Boiler Attendants, Electricians etc. These workmen had a direct relation with the generation of electricity through the Thermal Power Station and were supervised by the employees of the Board. According to them, they are the employees of the Board, but were arbitrarily branded as contract labourers. Neither the Chandrapur Mazdoor Kalyan Samity projected as the contractor nor the Board was authorized to engage them as contract labourers, under the Contract Labour (Regulation & Abolition") Act, 1970 (hereafter also referred as the "Labour Act"). No agreement between the Board and the Contractor did exist in this regard at any point of time. It was asserted that the Chandrapur Mazdoor Kalyan Samity in any view of the matter, was not authorized to supply labourers after September 18, 2001 on the expiry of the tenure of its licence therefor. It was maintained that the endeavour to treat the workmen as labourers supplied by the Chandrapur Mazdoor Kalyan Samity, was only a camouflage. Though they were directly controlled by the Management and were permitted to put their signatures in the Attendance Register of the Board, they were sought to be deprived of their rights and privileges of regular employees. They were arbitrarily denied their due amenities in service as well as regularization and eventually disengaged. The Union raised industrial dispute before the Conciliation authority under the Act. It also instituted W.P. (C)No. 3530/2002, before this Court, which on being dismissed, Writ Appeal No. 313 of 2002, was preferred. A Division Bench of this Court, while disposing the appeal on June 28, 2002, held the view that it would be appropriate for the Labour Commissioner to adjudicate the dispute, pending before him. As, the dispute could not be settled, thereafter through conciliation, the reference was made.

5. The petitioner-management pleaded that the workmen in question, had not been employed on continuous basis for discharging any perennial nature of job at the Chandrapur Thermal Power Station. Instead, they had been engaged as contract labourers from time to time depending on the exigencies of work under different

establishments through the concerned labour contractors. The generating unit of the Chandrapur Thermal Power Station having been closed since June, 1999, the operation of the units being not economically viable due to abnormal rise in fuel prices, the Board had to discontinue the engagement of contract labourers on economic and commercial reasons. According to the Petitioner, the authorities of the Chandrapur Thermal Power Station, in the prevailing situation could not utilize the services of the regular employees and there was hardly any work to be performed by the contract labourers for which a decision to suspend their further engagement was taken. The Management asserted that it not having received any notification u/s 10(1) of the Act, prohibiting engagement of contract labourers at the Chandrapur Thermal Power Station, there was no embargo in that regard. However, due to the suspension of the operation of the plant there, it was constrained to stop further engagement of such labourers and, therefore, decided not to renew or extend the labour supply contract with the concerned contractor on and from the date of expiry of the existing agreements.

6. The learned Labour Court on a consideration of the pleadings of the parties and the evidence adduced by them both oral and documentary, returned a finding that the petitioner-Management had failed to prove that the workmen in question were contract labourers and directed to reinstate them, if found/eligible and fit for their jobs alongwith back wages. In coming to the said conclusion, it noticed the testimony of WW No. 1, Shri Sonaram Das to the effect that he had been working in the Chandrapur Thermal Power Station (hereafter for short also referred to as the "CTPS"), under different officers. The witness denied to have been engaged through a contractor. The evidence of WW No. 2, Shri Had Charan Deka, to the effect that he had-worked in the CTPS from 1989 to May, 2002, as an electrician and that from that month (May, 2002) all the casual employees were discharged, was taken note of. The statement of, the said witness that the casual employees were directly employed by the Board, was also recorded. The witness proved Exhibit A & C, the attendance registers for the period July 1999 to October, 2000 and January, 2002 to March, 2003 respectively. He also deposed that his name appeared at SI. No. 17 of Exhibit C(1). It also noticed the evidence of WW No. 3, Shri Pradip Saikia to the effect that he had been asked by the Superintendent of CTPS to work as a Boiler Helper since 1989. He proved the related certificate Exhibit D, E & F, pertaining to his passing of the Boiler Proficiency Test. His testimony that the workmen were directly engaged by the Board and that there was no contract between the Board and the contractors for supply of labourers, was acted upon. The same witness amongst others, proved Exhibit G an attendance register and its signature G (1) and G (2) therein. The statement of WW No. 4, Shri Dharanidhar Kalita, was construed by the Labour Court to be supportive of the testimony of the other witnesses for the workmen.

7. While dealing with the evidence adduced by the petitioner-management, the Labour Court recorded the statement of MW No. 1, K.K. Chakravarty, Power Station Superintendent in-charge, to the effect that the CTPS had become nonfunctional

since July, 1999 due to high cost of fuel. The testimony of the witness that between 1989 to 1999, the CTPS had engaged contract labourers, was noted. The witness, inter alia, had proved the contract between the CTPS and the contractor for supply of labourers as Exhibit 6. It also took into account the statement of MW No. 2, Shri Mukut Das, Executive Engineer, ASEB to the effect that he had been posted at CTPS in March, 1996 and that during his tenure contract labourers had been engaged on monthly basis. The witness stated that the works of the contract labourers were supervised by the employees of the Board and their wages were paid directly to the Chandrapur Mazdoor Kalyan Samity. The failure of the said witness to affirm that there was a contract between the Board and contractor for supply of labourers, was noticed by the Labour Court.

8. It held, referring to Exhibit 3, a photo copy of the Registration Certificate of the Chandrapur Mazdoor Kalyan Samity, that it had been formed and registered only on June 2, 1997, whereas, the claim of the workmen was that they were engaged by the Board from 1989 and that their works were directly supervised by the employees thereof. It concluded that as a licence under Sections 7(1) and 12(1) of the Act, was a mandatory requirement to authorize a principal employer and a contractor respectively to engage contract labour, the petitioner management having failed to prove any such licence, engagement of contract labourers, if any, was illegal. Relying on the attendance registers proved before it, the learned Labour Court determined that all the workmen involved, had worked for more than 240 days every year in different capacities from 1989. It, therefore, held the view that they were entitled to be absorbed permanently in some other establishment of the Management as the CTPS was defunct.

9. Mr. Das, has urged that the learned Labour Court's conclusion that the workmen involved, were not contract labourers but workmen under the Board on the assumption that neither the petitioner-management nor the contractor had licence under the Act, is patently flawed. There being no evidence on record to establish that the persons concerned are the workmen of the Board, the finding to the said effect is perverse. The learned Counsel argued that as in any view of the matter working for 240 days in any industrial establishment, per se, would not render the person concerned a workman therein, the learned Labour Court erred in law in acting on the attendance register to the said effect in entering a finding that the persons concerned were not the contract labourers. Further, the learned Labour Court having totally misread, the evidence on record, the conclusions based thereon, are manifestly erroneous, thus vitiating the impugned award, he urged. According to Mr. Das, mere contravention of the provisions of the Act, relating to engagement of contract labourers, while, may attract penal consequences would not ipso facto upgrade their status to that of; workmen and, therefore, the learned Labour Court totally misdirected itself in holding that as the Board or the Chandrapur Mazdoor Kalyan Samity did not have the licence u/s 7 & 10, the persons concerned were not contract labourers. In support of his submissions Mr. Das,

placed reliance on the decisions of the Apex Court in [Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,](#), [Gangadhar Pillai Vs. Siemens Ltd.,](#) and of the Jharkhand High Court in Bharat Coking Coal Ltd. v. Presiding Officer, Dhanbad 2004 LIC 768, A.P.S.R.T.C. and Ors. v. G. Srinivas Reddy and Ors. 2006 (111) FLR 515 (SC), [Electronics Corporation of India Ltd. Vs. Electronics Corporation of India Service Engineers Union,](#) .

10. Per contra Mr. Dasgupta, contended that the learned Tribunal being authorized in law to scrutinize the materials on record to examine the relationship of employer and; employee in a dispute of the present nature, the findings recorded on the basis of an exhaustive appreciation of the materials on record, do not warrant interference of this Court in its writ jurisdiction. As the materials on record, demonstrate that the persons concerned had rendered their services under the direct control and supervision of the Board in its different offices and that the contractor had no role in this regard, they were evidently workmen under the Board. This is, further fortified by the attendance register registering the names of the persons concerned, amongst others, for the purpose of payments of their wages, he urged. Mr. Dasgupta, referring to Exhibit B, contended that thereby, the Board had recommended for the regularization of the services of the persons involved which is a clear indicator of their status of workmen under it. The learned Counsel dismissed the challenge to the observations of the learned Labour Court pertaining to absence of licence of the Board and the contractor as decisive of the issue. According to him, the view to the said effect, was only supplementary in nature, the other 1 materials on record having proclaimed the status of the persons involved as workmen under it. To buttress his arguments, Mr. Dasgupta, pressed into service the decisions of the Apex Court in [Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,](#) , [Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,](#) , [Bharat Heavy Electrical Limited Vs. State of U.P. and Others,](#)

11. The rival submissions have been duly analyzed. The challenge to the impugned award being oriented on perversity and absurdity, vis-a-vis the materials on record, it would be expedient to recapitulate the relevant evidence both oral and documentary, in more details. Whereas, the petitioner-management had examined two witnesses, the Union sought to reinforce its stand by citing four. Both sides also, proved documents. WW No. 1, Shri Sonaram Das, deposed that he had been working with the CTPS from 1989 to 1994 as helper of Jr. Engineer, Supervisor etc. in the Mechanical Division whereafter, he was transferred to the Chemical laboratory. He stated that he worked under the instructions of the Board. He along with other casual employees were paid their wages by the Board but were later on utilized as a contract labourers. He testified that they were never engaged through any contractor. In cross-examination, he admitted to have been engaged, through Chandrapur Mazdoor Kalyan Samity (hereafter for short referred to as the "CMKS"). According to the witness, he used to receive wages by putting signature on a register maintained by the said Samity. He further stated that they used to sign in

the attendance register maintained by the Board, where regular employees did so.

12. WW No. 2, Haricharan Deka, testified that he was serving in the electrical department with the CTPS as an electrician from 1989 upto May, 2002. He further stated that he along with other casual employees worked as per the instruction of the Jr. Engineer of the Board and their works were similar to those performed by the permanent employees of the Board. He asserted that they were directly engaged by the Board but were later on shown to have been so through the CMKS. The witness deposed that they were never directed to do any work by the contractor and affirmed that they signed the attendance register of the Board along with its permanent employees. He proved Exhibit A, the attendance register for the period July, 1999 to October, 2000 with the relevant entry Exhibit A(1), reflecting his name along with those of two others. The witness also proved Exhibit C3 another attendance register for January, 2002 to March, 2003, as well as the relevant entry Exhibit C(1), showing his name and that of Pradip Boro, another employee. The witness stated that they were verbally instructed to do the works and no written instructions were ever issued. While, asserting that there was no break in their service, he stated that they were paid their wages through the contractor. He admitted in cross-examination that CTPS informed the CMKS after some time that no worker of the union would be required.

13. WW No. 3, Shri Pradip Saikia, testified that he had worked with the CTPS as a construction worker since 1987. According to him, in all 40 persons worked with him as casual workers. He proved Exhibit B, whereby the Superintendent CTPS recommended the regularization of their service. The witness asserted that their works were directly supervised by the Board and there was no agreement between it and the contractor for supplying labourers. He proved Exhibit G, attendance register with Exhibit G(1) and G(2), his signatures. He denied that they were engaged by the contractor. He stated that they worked continuously upto May 31, 2002 in CMKS as casual employees from 1998, whereafter, they raised a dispute for their regularization. The witness in cross-examination stated that no appointment letter had been issued to him by the CTPS. With reference to Exhibit 5, he stated that the CTPS, thereafter, used to employ persons through CMKS of which he was a member.

14. WW No. 4, Sri Dharanidhar Kalita, stated that he was an employee of CTPS along with 39 others working since 1989 till May 31, 2002. He stated that they were engaged as casual workers in the CTPS for jobs, which were perennial in nature. He proved Exhibit J, attendance register for the period 2002 with Exhibit J(1) his signature. He testified that their works were directly supervised by the senior employees of the Board. He denied that they had been engaged by any contractor. In cross-examination, the witness stated that they had been engaged by the Power Station Superintendent but were not issued any appointment letter. According to the witness, CMKS was constituted in 1997 and at that time there was no contractor. He stated that Hemkanta Bordoloi, Bimal Kalita, Pradip Saikia etc. had passed the

Boiler Proficiency examination and to be eligible to appear in it, the person concerned has to be the employee of the Board.

15. No. 1, Sri Kumar Kishore Chakraborty, stated that from 1989 to 1999, October, contract labourers were supplied to CTPS by licenced labour contractors. The witness amongst others, proved Exhibit 3, the photocopy of certificate of Registration of CMKS and Exhibit 4, its licence. He also proved Exhibit 6, whereby CMKS, was required to supply contract labourers. He also proved Exhibit 8, whereby the CMKS was intimated by the Board that after May 31, 2002, no further supply of labourers would be required from it. According to the witness, contract labourers were engaged for works intermittent in nature associated with operation and maintenance of the plant. As the work was not of permanent nature, temporary contract labourers were engaged. With the suspension of power generation no contract labourer was necessary as the existing staff was in surplus. The witness while affirming that the 37 workmen were engaged as skilled and unskilled labourers, admitted that their works directly related to the generation of power. He deposed that some of them were engaged as Boiler Attendants and Electricians in Operation Division, Boiler Sub-Division, Pump House, Laboratories workshop. Water Supply etc. He admitted that they were allowed to put their signature in the attendance register. While conceding that he had not produced the registers prior to 1997, he deposed that from September, 1997, these workers were allowed to put their signature in the attendance register along with other regular employees of the Board. He confirmed that these workers were engaged time to time from 1989 and for them separate registers were maintained. He also admitted that their works were directly supervised by the ASEB and not by the Contractors. He emphasized that the contractors had nothing to do with the jobs performed by the workers. According to the witness, the Board had the authority to engage these persons as contract labourers. He, however, expressed ignorance about the existence of any contract between the Board and the contractor. He stated that the order for engagement of labourers, was made on monthly basis. While, admitting that he was unaware about the time of registration of CMKS, he affirmed that the 37 workers were the members of the Samity. He admitted that the licence of CMKS, issued on September 19, 1997, was renewed only up to September 18, 2001. He also deposed that some of those workers were working on monthly basis continuously till May 31, 2002.

16. MW No. 2, Shri Mukut Das, an Executive Engineer of the Board, stated that he was posted at CTPS since March, 1996. According to him, during his period of service contract labourers were employed by the establishment through contractors on monthly basis. He stated that the works performed by them, were inter alia transportation of machinery and cleaning. Some of them were employed in the Hostel of the ASEB as cooks and errand boys. The witness admitted that their works were supervised by the employees of the Board but their wages were paid directly to the CMKS. He deposed that the Power Station Superintendent of the CTPS wrote

to the higher authorities for regularization of the contract labourers under duress. He, however, added that he could not say under what condition the recommendation had to be made. The witness in cross-examination, admitted that he had not been authorized by the Board to depose in the case. He further admitted that from before March, 1996, the Board had employed about 39 contract labourers. He expressed ignorance about any contract between the Board and the contractors for supplying labourers. He also could not say as to whether the, contractor had any licence to supply such labourers. He admitted that the labourers performed their works as per the directions of the Sub-Divisional Officer or Shift Charge Engineers of the Board and that the contractors had nothing to do with the works of the labourers. He stated that the workers in the case, formed a Samity, which was the contractor. Exhibit B, is the letter dated September 12, 1999, addressed by the Power Station Superintendent, CTPS to the Chief Engineer (G), ASEB, Bijulee Bhawan, Paltanbazar, Guwahati, intimating the latter that there were 40 casual labours employed at the Chandrapur Thermal Power Station, most of them engaged from 1989, due to shortage of departmental manpower with the approval of then CE(G). The letter discloses that the casual labourers were continued, as the shortfall was not replenished by the departmental staff. Thereby, it was underlined that the casual labourers had obtained considerable expertise and experience in the power plant over the years and that some of them had obtained Boiler Attendant Grade-11 competency certificate. A recommendation was made, considering the shortage of manpower in the primary level for absorption of the casual labourers in the Board. It appears that the request was pursued even thereafter, as is evident from the letter dated December 23, 1999 (Annexure-J), whereby, the Joint Secretary to the Government of Assam, Labour and Employment Department, permitted the Board to take appropriate steps to regularize the existing Contract Labourers and Muster Roll workers engaged in the ASEB/CTPS in a phased manner. The certificate of registration of CMKS, Exhibit 3, is dated June 2, 1997 and the licence issued in its favour by the office of the senior Assistant Commissioner-cum Licensing Officer, Ulubari, Guwahati for labour supply was issued on September 19, 1997. The initial term of the licence though, was upto September 18, 1998, the same was thereafter extended till September 18, 2001. Vide Exhibit 6, dated November 19, 1999, the Power Station Superintendent, CTPS required the CMKS to supply skilled and unskilled contract labourers as mentioned therein. As noticed hereinabove, by the letter dated May 10, 2002, Exhibit 8, CMKS, was informed by the Power Station Superintendent, CTPS that with the expiry of the current term of supply ending on May 31, 2002, no labourers would be required from it.

17. A cumulative reading of the evidence as a whole, demonstrates that the persons involved, had been engaged at the CTPS from time to time, since 1989 and performed works directly relatable to the generation of power. As is evident from the testimony of MW 1, Shri Kumar Kishore Chakraborty, they were engaged by the Power Station Superintendent of the CTPS, who was responsible for the supervision

and control of the power station. Their works were directly supervised by the Board and not by the contractors. They were allowed to put their signatures in the attendance register, where the regular employees of the Board also signed. The evidence of MW 1, to the effect that he was not aware of any agreement between the Board and the contractors in the matter of engagement of contract labourers is of utmost significance, as CMKS, admittedly had been registered in the year 1997 and the persons involved were engaged from before i.e. 1989. The fact that these persons were the members of the said Samity and received their wages through it, is not of any definitive relevance in view of the above. The licence issued to the CMKS as Exhibit 4, expired on September 18, 2001. No licence of any other contractor has been proved by the Board. Even, if, the testimony of the witnesses for the workmen has to some extent wavered, as to whether they were directly engaged by the Board or supplied by the contractor, the evidence of WW No. 1 and MW No. 1 in my considered opinion establishes that they had been engaged by the Board. To put it differently, in the background of the recorded facts, the view that the persons involved in the reference had been engaged by the Board for discharging works directly associated with the generation of power can by no means, be impeached as absurd or preposterous. Not only some of them were allowed to take the Boiler Proficiency test, which according to the Union, was permissible only for the employees of the Board, recommendation for regularizing their services proclaims in favour of their satisfactory performance and indispensability. Noticeably, the persons concerned had continued rendering their services till May 31, 2002, though, the licence of CMKS expired on September 18, 2001. Having regard to the categorical assertion of MW No. 1, that they had been engaged by the Power Station Superintendent, CTPS, the date of registration of CMKS and the expiry of the licence on September 18, 2001, the plea of their engagement through it, is not convincing. There is no evidence, worth the name, to prove that they had been engaged by any other licensed contractor under the Act. No certificate of registration under the Act empowering the Board to engage contract labour has also been proved. The industrial dispute having been raised on the issue of their discharge, it was open for the learned Court below to scrutinize the evidence adduced to decipher the true relationship between the parties. The conclusions of the learned Tribunal are the yield of meticulous and exhaustive review of the materials on record and cannot be condemned as perverse. The contention that mere contravention of Sections 7, 10 and 12 of the Act, is not suggestive of the status of workman of the persons involved when tested on the touchstone of the evidence available, does not merit acceptance. The determination of the learned Tribunal in favour of the Union, noticing the absence of any licence of the Board or CMKS, under the Act, at all relevant times to engage contract labourers has to be viewed in the above background. Completion of 240 days of service every year from 1989 as discernible from the attendance registers was taken note of by the learned Tribunal as a corroborative consideration. It's findings, being plausible on the basis of the pleadings and the evidence, having regard to the constricted

scope of interference therewith under Article 226 of the Constitution of India, the plea to the contrary cannot be sustained.

18. The determinants to deduce the] relationship of employer and employee were authoritatively enunciated in *Hussainbhai* (supra). The petitioner therein, was a factory owner manufacturing ropes. The workmen engaged, according to him, were hired by contractors, who had executed one agreement with him to get the works done. He disowned them as his workmen. The Apex Court noticed that the work done by the persons concerned, was an integral part of the industry and that the raw materials were supplied by the management of the factory premises belonged to it. It also noted that the finished product was taken by the management for its own trade and that the workmen were broadly under its control. It observed that raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles shape the law when the weaker, working class sector needs succour for livelihood through labour. The true test was adumbrated in the following terms:

5. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex-contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the; naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the may a of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken, off.

19. Respondents 6 to 9 in *Bharat Heavy Electricals Ltd.* (supra), were engaged as gardeners of the residential colony of the appellant through the agency of Respondent Nos. 3 to 5. Their services having been terminated, they raised an industrial dispute. The appellant took the plea that they were never employed by it. The learned Labour Court as well as the jurisdictional High Court held that the

workmen were under the employment, supervision and control of the appellant and thus upheld their claim. Referring to the ratio in Hussainbhai (supra), the Apex Court reiterated that the workmen-labour were engaged to produce goods or services which were for the business of another the employer. The Apex Court in the contextual facts, refused to interfere. The above time tested precepts to disinter the often obscured and camouflaged relationship of employer and employee, in my view unassailably consolidates the preceding determinations in the present case.

20. The decision of the Apex Court in Electronics Corporation of India Ltd. (supra), pressed into service on behalf of the Board does not propound in absolute terms that irrespective of the issue seeking adjudication following the termination of any person, the onus indispensably is on him to establish that he is the workman under the Industrial Disputes Act, 1947. Such an onus would, in my estimate, be contingent on the terms of the reference of the industrial dispute and the attending facts and circumstances.

21. In Secretary, H.S.E.B. (supra), the appellant awarded a contract to one Kashmir Singh to engage minimum 42 Safai Karmacharis with effect from May 15, 1987 for a period of one year and in terms thereof, the contractor took over the work and performed the same through them. On a dispute being raised by the Safai Karmacharies regarding their entitlement to be absorbed permanently on completion of 240 days under the Board, the Labour Court, Ambala in deciding the industrial reference, held that the workmen, were entitled to reinstatement with continuity in" service along with 10 percent back wages. The appellant challenged the award before the High Court of Punjab and Haryana, which ruled that there existed a relationship of employer and, workmen between the Board and the respondents. The matter reached the Apex Court. It was held that there was no genuine contract labour system prevailing at the relevant time, whereunder the Board could have acted as only the principal employer and Kashmir Singh; as a licenced contractor employing labour on his own account. It ruled that the so-called contract system was a mere camouflage, and a smoke screen disguised in a veil which could easily be pierced to deduce the real contractual; relationship between the Board and the employees.

22. In a departure from the [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), the Apex Court in Steel Authority of India Ltd. and Ors. (supra), held that on the issuance of a prohibition notification u/s 10(1) of the Act debarring employment of contract labour or otherwise, in an industrial disputed brought before it, by any contract labour in regard to conditions of service, the Industrial Adjudicator would have to consider the question whether the contractor had been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or it is a mere ruse or camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the

benefit thereunder. It elucidated that if the contract is found to be not genuine but a mere camouflage, the so-called contract labour would have to be treated as an employee of the principal employer, who shall be directed to regularize the services of the contract labour in the establishment concerned. In other words, it declared that issuance of a notification by the appropriate Government u/s 10(1) of the Act, prohibiting employment of contract labour would not signify automatic absorption of the contract labour.

23. In such an eventuality, the contract labour would have to approach the Industrial Tribunal/Court to establish that the contract-labour system was only a pretence to avoid the labour law benefits to them. This view found reiteration in A.P.S.R.T.C. and Ors. (supra). The decisions in Bharat Coking Coal Ltd. (supra) are distinguishable on facts and do not require a detailed reference.

24. In the perspective of the present factual scenario and the above adjudication, these decisions have no utility for the petitioner management. The conclusion of the learned Industrial Tribunal that the persons involved, were not contract labourers within the meaning of the Act having been upheld as above, these decisions have no application.

25. The upshot of the above narrative, is that the award impugned does not warrant any interference in the exercise of the power of the judicial review of this Court. The petition being devoid of merit, is thus dismissed. No costs.