

(2011) 08 JH CK 0017

Jharkhand High Court

Case No: C.W.J.C. No. 1408 of 1999 (R)

Usha Martin Industries
Ltd. (Usha Ishmal
Division)

APPELLANT

Vs

The Presiding Officer,
Labour Court and
Dashrath Upadhyay

RESPONDENT

Date of Decision: Aug. 12, 2011

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 7(2)
- Industrial Disputes Act, 1947 - Section 10(1), 2

Citation: (2011) 4 JCR 275

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Poonam Srivastav, J.

Heard counsel for the Petitioner and the Respondent-workman in person.

2. The instant writ petition is directed against an Award passed by the Presiding Officer, Labour Court, Ranchi dated 04.06.1998 in Reference

case No. 34 of 1994 (M/s Usha Martin Industries Ltd., Usha Ishmal Division v. Workman-Dashrath Upadhyay). The reference made by the

Government of Bihar, vide Notification No. 4/D2-6033/94 was:

Whether termination of services of workman Dashrath Upadhyay by the management of M/s Usha Martin Industries Ltd, Ishmal Division,

Tatisilwai, Ranchi is justified? If not what relief the workman is entitled to?.

3. The labour court directed the management-Petitioner to reinstate Respondent No. 2 with full back wages. According to the counsel on behalf of

the Petitioner, a number of questions has been raised in the instant writ petition while challenging the Award. The main contention is that once the

labour court came to a positive finding that the workman-Dashrath Upadhyay has failed to prove that he was appointed as a workman under Usha

Martin Industries Ltd., Ismal Division and that he was a contract labour under M/s Agarwal Traders. No. order of reinstatement could be passed

and, therefore, the jurisdiction exercised on the face of it, is an excessive exercise and liable to be quashed.

4. The next contention is that labour court committed grave illegality by following certain decisions of the Apex Court which stood overruled and,

therefore, the decision impugned in the instant writ petition is vitiated and amounts to an error apparent on the face of the record and manifestly

erroneous. The order of reinstating the Respondent with full back wages despite there being an unequivocal admission of the workman that he was

drawing salary @ Rs. 1100/- per month by his employment elsewhere with effect from 1994 and thus, the workman is not entitled to full back

wages as held by the labour court.

5. The Petitioner is a company incorporated under the provisions of Company's Act, 1956. On 26.08.1994, the Government of Bihar issued a

Notification u/s 10(1)(c) of the Industrial Disputes Act making a reference detailed hereinabove regarding the correctness of the termination of

services of workman-Dashrath Upadhyay.

6. On hearing the respective counsel at length, the question to be adjudicated is that whether Section 7(2) of the Contract Labour (Regulation and

Abolition) Act, 1970, was wrongly construed and also by application of the aforesaid Act, order of reinstatement passed is valid and legal.

Learned Counsel has emphasised that once the court was of the view that the Respondent has not been able to establish that he was a workman in

the Petitioner company, his reinstatement has necessarily to be quashed.

7. Reliance was placed on a decision of Madras High Court in the case of The Workmen of Best & Crompton Industries Ltd. v. The management

of Best & Crompton Engineering Ltd. and Ors., reported in (1985) 1 Lab LJ 492, which stood overruled by the Apex Court in a decision Dena

Nath and others Vs. National Fertilisers Ltd. and others, .

8. It is argued that M/s Usha Ishmal Division is a separate industrial establishment as constituted under the provisions of Section 2(k) of the

Industrial Disputes Act. It is further argued that registration with the E.S.I. authorities mentioning that the name of the employer was M/s Usha

Ishmal is not sufficient to grant the benefit and treat the Respondent as a workman of the said industry, and the workman is entitled for

reinstatement. It is only the form which was filled up for the purpose to meet the exigency of accident etc. while on duty. The workman was

declared unfit as a result of an accident that took place on 19.10.1990. He was declared unfit for a limited period by the E.S.I. authorities, but long

after lapse of the aforesaid period, No. information was received from the workman or he failed to bring on record any fitness certificate etc. as

required in law. It was only at a very late stage, the Respondent produced a fitness certificate in July 1991. This was only with a view to get a back

door entry in the establishment, but the Respondent-Dashrath Upadhyay was never an employee of the management and thus, there is No.

question of his termination. The reference itself was emphatically argued to be bad.

9. Disputing the aforesaid arguments, the workman has submitted that he was working with the Petitioner since 1988 and he was not under the

employment of any other person or was hired to work as a contract labour through the contractors.

10. However, these factual dispute cannot be decided since the labour court itself has given a positive finding of fact that the workman has not

been able to substantiate that he was appointed as a workman under Usha Ishmal Division and he was working as a contract labour. The finding

that there is No. registration certificate required u/s 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970 or any licence u/s 12 of the

Act with regard to Usha Ishmal Division for the management and, therefore, concluded that the Respondent was working as a contract labour in

the factory of the management.

11. Thus, in my view, the conclusion arrived at by the labour court that the workman will be deemed as a workman of Usha Ishmal Ltd. does not

call for any interference. Evidently, the demand made by the concerned workman directly as well as through the Deputy Labour Commissioner and

the refusal by the management to the Deputy Labour Commissioner was concluded to be a termination on the part of the Petitioner.

12. I am of the considered opinion that the conclusions of the labour court cannot be said to be manifestly erroneous or calls for any interference

whatsoever. Besides, the Contract Labour (Regulation and Abolition) Act, 1970, is a social welfare legislation to further the interest of the

community of workmen, as opposed to particular interest of an individual entrepreneurs. It seeks to achieve public purpose i.e. regulate conditions

of contract labour and to abolish, if it is found to be of a perennial nature.

13. The facts of the present case evidently goes to show that the workman has worked for a considerable length of period. The abolition of

contract labour ensures the right to the workman to be treated as such by the establishment in which they were working as a contract labour

through the contractor and the effect of the said Act is to establish a direct relationship of an employer and employee between the principal

employer and workman irrespective of the fact that he was initially employed as a contract labour. I am not convinced by the arguments of the

counsel on behalf of the Petitioner and not inclined to quash the impugned judgment to the extent of reinstatement of the workman. However, so

far the reinstatement with full back wages is concerned, I am of the opinion that admittedly, the workman was not working under the Petitioner for

the intervening period, the full back wages directed to be paid to the Respondent by means of the impugned Award, cannot be upheld specially in

view of the fact that the Respondent himself admitted to be drawing a salary of Rs. 1100/- per month from a gainful employment elsewhere

between 1991 to 1994. The workman is, therefore, entitled for back wages only from 1994.

14. In the circumstances, the writ petition is dismissed. The Petitioner is directed to be reinstated by the Respondent with effect from 1994. He is

entitled for wages from the date of reference. The Petitioner shall treat the workman in service with effect from the said date and he is also entitled

for full wages from the said date.