(2013) 09 JH CK 0049

Jharkhand High Court

Case No: CWJC No. 1140 of 1994 (P) and CWJC. No. 3109 of 1998 (P)

Employers in relation to the management of Bhagaband Colliery of M/s. Bharat Coking Coal Ltd.		APPELLANT
	Vs	
Presiding Officer, Central Government and Another		RESPONDENT

Date of Decision: Sept. 25, 2013

Citation: (2013) 4 AJR 694 : (2013) 139 FLR 1047

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Ananda Sen, for the Appellant; Rohit Roy and Sarju Prasad, for the Respondent

Final Decision: Disposed Off

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. In CWJC No. 1140 of 1994(P) the Award Dated 14.08.1992 rendered in Reference Case No. 110 of 1990 by the Central Government Industrial Tribunal No. 1, Dhanbad is under challenge by the writ petitioner-Management. The dispute raised by the workmen was referred by the Central Government vide Notification dated 08/09.05.1990 u/s 10(1)(b) and Sub Section 2(a) of the I.D. Act. 1947 in the following terms:-

Whether Shri Jogeshwar Singh and 51 other workmen as per list annexed have actually worked during 1983 to 1986 in the various jobs of which contract was given to Sri Jogeshwar Singh, Contractor, Dhanbad. If so, whether the management of Bhagaband Colliery under Putkee Balihari Area of M/s. Bharat Coking Coal Ltd. is justified is not regularizing/departmentalizing these workmen as miner/loader ? If not, what relief these workmen are entitled ?

2. In the CWJC No. 3109 of 1998(R), the same writ petitioner-Management has challenged the order dated 07.09.1998 passed by the Central Government Industrial Tribunal No. 2, Dhanbad in the Miscellaneous Case No. 01 of 1998. The said miscellaneous case was instituted for the purposes for identifying 52 workmen covered under the Award dated 14.08.1992 rendered in Reference Case No. 110 of 1990. The matter had been referred to the Industrial Tribunal vide order dated 20.04.1998 passed by learned Single Judge of this Court in first writ petition i.e. CWJC No. 1140 of 1994(P) for the purposes of payment of last drawn wages u/s 17(B) of the Industrial Disputes Act to the affected workmen. In the Miscellaneous Case out of 52 persons 41 finally appeared and amongst them only 36 workmen were identified as beneficiaries of the Award dated 14.08.1992 in Reference Case No. 110 of 1990.

3. The workmen in Reference Case No. 110 of 1990 had pleaded that they along with Jogeshwar Singh had been working as permanent underground workmen of Bhagaband Colliery of Kendwadih Section since long with unblemished record of service. They had been performing the jobs of underground stone cutters regularly and continuously and also performed other permanent nature of underground jobs such as making duggis for roof supporting and line packing. These jobs were in prohibited category of work and perennial in nature. In that process they have completed 190 days attendance in each calendar year. They were performing their jobs under the direct control and supervision of the Management''s competent persons. All the implements for execution of Jobs were being supplied by the management. They had been rendering services and producing goods for the benefit of the colliery management. These workmen have been denied regularization in order to avoid compliance of labour legislation. They were disbursed their wages below the rates of NCWA-I, II & III through intermediaries. Neither Contractor had possessed any license under CLRA Act, 1970 nor establishment of the management was registered for engagement of contractual workmen in stone cutting jobs. As a matter of fact, they were permanent employees of the management, they were stopped from performing such jobs in violation of the principles of natural justice and the mandatory provisions of Standing Order. On the other hand, the management in consultation with the Central Trade Union had arrived at a decision, which was reflected vide Circular dated 08/09-05-1986, according to which all the underground contractors'' workmen engaged in prohibited category of jobs who had put in 190 days attendance as miner/loader were to be absorbed in the employment of the management. Upon failure of the management to absorb them with retrospective effect with all arrears and wages, the dispute was raised by the workmen and conciliation proceeding were held which failed. Thereafter, the instant reference was made to the learned Tribunal.

4. On the other hand, it is the case of the management put forth before the learned Tribunal that the reference was not legally maintainable as there was no relationship of employer and employee between the management and the

concerned person. The said Jogeshwar Singh was a contractor engaged for execution of miscellaneous contractual jobs as and when available during the period from the end of 1983 to the end of 1985. He carried on contractual jobs both on the surface and underground mine intermittently according to the requirement of the management. At no point of time more than 15 workmen were engaged. The contractual job consisted of mainly civil, stores and renovation works and were casual in nature. These workmen along with contractor Jogeshwar Singh had conspired together to make out the present case with the hope to enter into the services of the management on false representation of facts.

5. During the course of proceeding before learned Tribunal, the Union examined 2 witnesses namely WW-1, Lalan Saw and WW-2, Jogeshwar Singh and also produced documentary evidence in the nature of exhibits being W-1 series, W-2 series, W-3 series. The management examined three witnesses namely MW-1 Ram Chandra Saw, who was working in Bhagaband Colliery as General Clerk, MW-2, S.C. Pathak, who was working in the same colliery as Cashier since 1984, MW-3, Arjun Kumar Ghosal, who was working as Assistant Manger since 1980 in the same Colliery. It also produced a number of documentary evidence as M1 to M-4/16. The workmen witness, W.W. 1, in his deposition, stated that the concerned workmen were working in underground mines since 1983 in all three shifts as per direction and requirement of the management. The nature of their jobs performed by them were stone cutting, boring in coal, making of duggis, making of drain and sumps, which were permanent in nature. They were required to go to cap lamp room for taking cap lamp and to record their attendance which sometime was recorded in Chutka and sometime in Khata. In the underground mines they used to work under the supervision of management. According to him since 1983 till they were stopped from discharging their duties in 1986, they had worked continuously in underground mine of Bhagaband Colliery and in the process each of hem had completed 240 days attendance. He also in his cross-examination stated that certain employees of Bhagaband Colliery namely Asfudin, R. K. Ram, Sitaram Prasad and 2/3 Sahabas used to show their work place. According to W.W.-2, Jogeshwar Singh, they used to get only Rs. 15/- per head per day as wages since 1983 till they were stopped from doing work in 1986 and in the process they had worked for 240 days or more in every calender year. He produced attendance slips issued by the management both photo copies and originals issued under the signature of Ghosal Sahab, Pit Manager of the colliery which have been marked Ext. W-1 series. He denied suggestion by the management that these were fabricated document. M.W.-3, being Arjun Kumar Ghosal also examined by the management was working as Assistant Manager since 1980 in Bhagaband Colliery.

6. On the part of the Management, some extracts of the attendance register for the years 1981, 1982, 1983 and 1984 were produced though none of them would show that these workmen had worked 190 days (Exts. M1 to M-1/2). The extracts of attendance was prepared by MW-1 Ram Chandra Sao, General Clerk of the Colliery.

He admitted in cross-examination that the attendance of workmen working in underground mine is maintained in Form-C register. However, the said Form-C register was not produced by the management. On the other hand, it is a case of the management that the said Jogeshwar Singh contractor was engaged for execution of miscellaneous contract jobs as and when available during the period from the end of 1983 to the end of 1985 and that he carried on contractual job intermittently both on surface and in the underground mine according to the requirement. The management filed carbon copies of certain work orders issued to the contractor, Jogeshwar Singh for the period from 25.11.1981 till 01.08.1985 (Exts. M-3 to M-4/16) and also bills submitted by the contractor upon execution of work orders (Exts. M-4 to M-4/16) were also produced. However, according to the learned Tribunal both these work orders and bills did not represent the actual contractual work done by Jogeshwar Singh. Jogeshwar Singh on his part had deposed that these bills were signed under compulsion otherwise the management threatened him to stop the work. However, learned Tribunal found that the some of bills and work order indicate that the contractor was engaged for doing miscellaneous jobs and also for the jobs of making duggis in stone and jhama, driving gallery in stone and jhama, drivage in coal etc. These bills according to the learned Tribunal demolished the case of the management that the contractor was doing only miscellaneous jobs. The Tribunal found that it was evident that the nature of work which was performed in underground mines by these workmen were in the nature of prohibited category of work as per the notification issued by the Appropriate Government on 01.02.1975 under the provisions of Contract Labour (R & A) Act, 1970. Certain cash books were also produced on behalf of the management in which, payment amount of even Rs. 500/- or less were to be made by the management from the colliery and when the amount was more the same used to be paid from the Area office of the colliery. Learned Tribunal did not find that the this cash book reflected actual state of affairs with regard to the payment made to the contractor.

7. In the background of the aforesaid factual matrix and the evidence produced during the course of proceeding before learned Tribunal, the management has challenged the Award inter alia on three grounds.

(I) that the findings recorded by the learned Tribunal that these workmen have worked for more than 190 days is not based upon any factual basis nor any evidence produced on behalf of the workmen. He submits that even though such a finding may have been recorded, it does not lead to automatic regularization on completion of even 240 days of work in a calender year. Learned counsel for the petitioner-Management has relied upon a number of judgments rendered by the Hon''ble Supreme Court in the cases of Municipal Corporation Faridabad Vs. Durga Prasad, State of M.P. and Others Vs. Arjunlal Rajak, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and Another, Chairman, Oil and Natural Gas Corporation Ltd. and Another Vs. Shyamal Chandra Bhowmik,

(ii) The second ground raised on behalf of the petitioner is that the learned Tribunal has held the engagement of these workmen as a sham or make believe arrangement without however following the mandate as prescribed under the Constitution Bench Judgment of Hon''ble Supreme Court rendered in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . He further relies upon the judgment of learned Single Judge of this Court rendered in the case of Employers in relation to the Management of Rajrappa Coal Washery of Central Coalfields Ltd. Vs. the Presiding Officer, Central Government Industrial Tribunal No. 1 reported in 2013(3) JBCJ 118(HC) para-10 to 14 and 18. Learned counsel for the petitioner has also relied upon the judgment of Hon''ble Supreme Court rendered in the case of Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, to submit that automatic reinstatement is not a rule in cases where the termination of employee u/s 25(F) of the I.D. Act is found to be illegal and unjustified. He has also relied upon the judgment rendered in case of State of Uttaranchal and Another Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad, in order to submit that for the purposes of regularization certain factual details are gone into, which has not been done in the present case.
(iii) Learned counsel for the petitioner also assails the impugned Award by relying upon the finding recorded in Miscellaneous Case No. 01 of 1998 by the learned Tribunal. According to him, in the exercise to identify the said workmen for grant of 17 (B) wages only 41 workmen out of 52 covered under the reference had appeared out of which 36 workmen were only found to be genuine. He submits that therefore, the impugned Award was rendered without evidence in respect of engagement of 52 workmen in the employment of the Management. Therefore, a direction to regularize them and departmentalize them as category -1 workers in the employment of BCCL is wholly erroneous on facts and is fit to be set aside on that score alone.

8. Learned counsel for the respondents-workmen, on the other hand, has supported the impugned Award, inter alia, based upon the oral and documentary evidence produced during the course of proceedings in Reference Case No. 110 of 1990. At the outset, it is stated on behalf of the learned counsel that management in consultation with the Central Trade Union had consciously entered into memorandum of settlement, which is reflected in the Circular dated 8/9th May, 1986, according to which, all underground contractors'' workmen engaged in prohibited category of job who had put in 190 days of attendance as miner/loaders were to be absorbed in the employment of the Management. He submits that these workmen had been working in a prohibited category of job as per the notification dated 1st February, 1975, issued under C.L.R.A. Act, 1970. They had been performing the jobs of underground stone cutters regularly and continuously as also other perennial nature of underground jobs such as making duggis for roof supporting and line packing through contractor engaged by the petitioner management. In that process they had completed 190 days attendance in each calender year. These

workmen had been performing their jobs under the direct control and supervision of the Management for the period 1983 to 1986. Their attendance were recorded in the camp lamp room where they used to go for getting camp lamp for working in the underground mines. Though such a register was available with the management, but was deliberately not produced before learned Tribunal. According to them, attendance slips issued by the Management both photocopies and originals under the signature of Ghosal Saheb, Pit Manager in the colliery, were also produced in support of their contention. It is further submitted on their behalf that the statement of the said Arjun Kumar Ghosal, M.W. 3, that the contractor was engaged for doing only miscellaneous job was found by the learned Tribunal to be not correct as the bills of the contractor revealed that he was also engaged for the job of stone cutting which is prohibited category of job. It is also stated on behalf of the learned counsel that the said M.W. 3 himself admitted that the workmen working in underground mines are required to record their attendance and their names also appear in Cap Lamp Register, which has however not been produced by the Management. The said M.W. 3 has also admitted that the work in underground mine is hazardous one, where the Overman and Senior Overman are required to look after safety arrangement. That all works done in the underground mine is required to be supervised by competent person of the management. Such types of stone cutting, coal cutting and earth cutting are required to be supervised by the competent person of the management.

9. The workmen witnesses adduced on behalf of the respondents, have also categorically deposed that all the workmen had been made to perform jobs of stone cutting, boring in coal, making of duggis, making of drain and sumps stone under the supervision of the management with the implements provided by the management. In the said process they had put 240 days or more in every calender year during the period 1983 till 1986 when they were stopped from discharging their works. It is further submitted that the evidence of W.W. 1, Lalan Saw also reveals that the colliery was working in three shifts and all of them had been working in three shifts as per direction and requirement of the management in the said permanent nature of jobs.

10. In the background of consistent evidence brought on record before the learned Tribunal that these workmen were engaged by the management through an arrangement with the contractor, Jogeshwar Singh for doing miscellaneous jobs including those in the prohibited category of work such as stone cutting in underground mines from 1983 till 1986, the learned Tribunal held that in the said process they had completed at least 190 days attendance in every year. The learned Tribunal also found that their place of work belonged to the management and they were rendering services for the management. In such circumstances, while lifting the veil over the make believe arrangement in line with the ratio of the judgments relied upon, the tribunal rightly came to a finding that there existed relationship of employer and employee between the management of Bhagaband Colliery and

concerned workmen. It is further submitted that, the learned tribunal also took into account that though the contractor did not have any license nor the establishment of the management was registered for employment of workmen through the so called contractor in violation of provision of sections 9 & 12 of the Act of 1970, but the engagement of these workmen through the contractor was a make-believe arrangement. These workmen were broadly under the control of the management and the work done was integral part of the establishment of the management. In such circumstances, the learned tribunal has rightly held that the workmen under reference should be treated as workmen of the management of B.C.C.L. Accordingly, the Tribunal has directed the management to departmentalize them as General Mazdoor in Category-I and pay them wages upon reinstatement as per National Coal Wages Agreement-IV w.e.f. 8.5.1990 i.e. date of the notification making reference to the learned tribunal.

11. Learned counsel for the respondents-workmen has relied upon the judgment rendered in the case of G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, where the judgments rendered by Constitution Bench in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., have also been relied upon.

12. Learned counsel for the respondents submits that the learned tribunal in the wake of copious evidence has undertaken the exercise to lift the veil to arrive at a conclusion relating to true nature of engagement of these workmen by the management, which apparently was a sham in order to avoid the rigors of the various Labour Laws. Learned counsel for the respondents has also relied upon the judgment rendered in Civil Appeal No. 3962 of 2006 dated 18th November, 2009. It is submitted that in almost similar circumstances, the findings of the learned tribunal on facts were upheld by Hon''ble Supreme Court and the management of BCCL was directed to reinstate the concerned workmen within the stipulated period.

13. Learned counsel for the petitioner has also relied upon the judgment in Letters Patent Appeal No. 426 of 2010, in which, according to him, in similar circumstances the award of reinstatement was upheld by Division Bench of this Court after the challenge to the same in the writ petition, was also dismissed by learned Single Judge.

14. It is further submitted on behalf of the learned counsel for the respondents that this Court in exercise of writ jurisdiction, should not interfere in the findings of fact based upon the evidence adduced during the course of proceedings before the labour court unless it is wholly perverse and illegal. In such circumstances, these workmen are entitled to be regularized in service of the management.

15. Learned counsel for the respondents workmen has also submitted in defence to the findings recorded in Miscellaneous Case no. 1 of 1998 for identifying 52 workmen on question of payment of Section 17(B) Wages. It is submitted on his

behalf that these workmen were not only poor but also illiterate and had been performing jobs at a paltry rate for the management during the period 1983 to 1986. The proceedings in the labour court also took sometime to be concluded i.e. when the award was delivered on 14th August, 1992. In such circumstances, it can only be understood that, many of these workmen may have left the place i.e. colliery in question in search of suitable work for earning livelihood. This identification exercise under which 36 out of 52 workmen have been identified, only proves the case in favour of the workmen who have been long denied their due by the management of BCCL

16. I have heard learned counsel for the parties at considerable length and gone through the materials on record. At the outset, it is necessary to observe that the management of BCCL had consciously arrived at a decision to absorb underground contractors'' workmen engaged in a prohibited category of job who had put in 190 days attendance as miner/loader in the underground mine. It is also evident from the written statement filed by counsel for the Management in the said reference before learned Industrial Tribunal, Dhanbad that pursuant to such a decision all the contractors'' workers who had put 190 days attendance in every calender year from 1982 to 1985 were taken on the rolls of the colliery. However, in the instant case, the management had contested the claim of the workmen and taken a stand that the contractor''s worker did not fulfill the conditions and come within the provisions of policy decision of 8/9.5.1986, they were not taken on the rolls.

17. In the instant case, on refusal of the petitioner management to absorb these workmen in the employment of the management, on the dispute being raised by the concerned workmen after failure of conciliation, the reference in question was made by the Central Government under notification dated 8/9.5.1986 to the learned Central Government Industrial Tribunal No. 1, Dhanbad u/s 10(1)(b) and Sub Section 2(a) of the Industrial Disputes Act, 1947 in the terms which have quoted in the opening paragraph of the judgment.

18. The evidence oral and documentary, which has been produced during the course of the proceedings before the learned tribunal both on the part of the workmen and the management, show that the said Jogeshwar Singh, W.W. 2, was engaged as a contractor for execution of miscellaneous contract jobs between the period 1983 to 1985. The jobs carried out by the contractor through workmen, included jobs both on surface and in the underground mines according to the requirement. The learned Tribunal upon appreciation of the evidence adduced by the parties found that the work executed by the management through the contractor also related to stone cutting, boring in coal, making of duggis, making of drain and sumps stone etc. These works are performed in the underground mines and are in the prohibited category of work as per the notification issued by the appropriate government on 01-02-1975 under the provisions of C.L.R.A. Act, 1970. The learned Tribunal also found that neither the contractor, Jogeshwar Singh

possessed any license u/s 7 of the said Act nor the establishment of the management was registered in engagement of contractual work in stone cutting jobs as required u/s 12 of the Act of 1970. Therefore, the nature of job executed through the contractor, Jogeshwar Singh by the management by engaging workmen in question was found in the prohibited category of work. The workmen witnesses on their part had adduced evidence that the colliery was working in three shifts and all of them had been working in three shifts as per the direction and requirement of the management in the nature of jobs such as stone cutting, boring in coal, making of duggis, making of drain and sumps which were permanent in nature. They had also deposed that for performing such jobs they were required to take cap lamp from the cap lamp rooms where their attendance was recorded in ''Khata'' and ''Chutka'' while taking out materials from the stores of the company to underground mine for execution of the work. The management had produced some extract of attendance registers for the year 1981, 1982, 1983 and 1984 as Exts. M-1 to M-1/2, as per which these workmen were not shown to have worked for 190 days. The Management Witness no. 1, who had prepared extract of attendance, has admitted, in cross examination, that attendance of workmen working in underground mine is maintained in Form ''C'' Register and that the attendance clerk maintains Form-''C'' Register at the Pit. However, the said Management Witness claimed that he had never maintained Form-''C'' Register. The learned Tribunal in such circumstances found that admittedly the management is the custodian of Form-''C'' Register and it was not the case of the management that Form-''C'' Register for the relevant period were not available, but the same were not produced to ascertain the true position regarding attendance of the concerned workmen in underground mine. In such circumstances, the extract of attendance prepared by the management was not treated to be as exact attendance of the concerned workmen in Bhagaband Colliery for the relevant period. From the evidence produced by the management i.e. carbon copies of some work orders issued to the contractor, Jogeshwar Singh between 25th November, 1981 till 1st August, 1985 as Exts.-M-3 to M-3/16 and the bills submitted by the contractor upon execution of work orders i.e. Exts. M-4 to M-4/16, the learned tribunal found that those bills do not represent the actual contractual work done by the contractor. These bills demolish the case of management that the contractor was engaged for doing miscellaneous jobs only. It also took into account the answer of the management, to the claim statement of the union before the Assistant Labour Commissioner (C), where it was stated that the contractor, Jogeshwar Singh was awarded contract for working in 1983, 1984, 1985 and 1986 for doing different kinds of civil construction works, like line packing etc. and was also given emergency contracts for stone cutting etc. though intermittently in nature. In such circumstances as observed hereinabove, the learned tribunal came to a finding from the evidence on record that it was abundantly clear that the concerned workmen, through the so-called arrangement with the contractor, Jogeshwar Singh, were engaged by the management of Bhagaband Colliery for doing miscellaneous job and also for doing

prohibited category of job, such as, stone cutting in underground mine from 1983 till they were stopped from work in 1986. In the process each of them have completed at least 190 days attendance in every year. These workmen had been working under the supervision of the management and their work implements were supplied by the management. Admittedly, their place of work belonged to the management and they rendered services for the management. In such circumstance, the learned tribunal on the materials before it, was under a requirement of law, as also laid down in the judgment of the Constitution Bench of the Hon''ble Supreme Court reported in the case of SAIL & Ors. (Supra) to lift the veil to find out the true nature of engagement of the said workmen by the management. The learned tribunal did so and rightly came to conclusion that there existed relationship of employer and employee between the management of Bhangaband Colliery and the concerned workmen.

19. Learned tribunal, in fact also proceeded to discuss the contention of the management that absence of a license by contractor or registration by the employer under Sections 7 and 12 of the Act of 1970 invites penal consequences. The learned tribunal was conscious of the decision rendered in the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, that the absence of a license or registration did not lead to the conclusion that the concerned workmen are workmen of the principal employer. However, having regard to other facts and circumstances, such as, place of work belonging to the management, the work done by the workmen being integral part of the establishment of the management, services rendered by them were for the management and they were broadly under the control of the management, it came to a right conclusion that these workmen were really the workmen of the management, although a make-believe arrangement was made by employing them through contractor.

20. In those circumstances, in the wake of the conscious decision taken by the management through circular dated 8/9.5.1986 to absorb such underground contractor'' workmen engaged in a prohibited category of job, who had put 190 days attendance, the learned Tribunal rightly held that these workmen are entitled to be departmentalized as General Mazdoor in Category-I under the management of Bhagaband Colliery from the date of present reference i.e. 8th May, 1990 and paid wages as per N.C.W.A.-IV. The findings of the learned tribunal therefore cannot be said to be in derogation of what has been laid down by Hon''ble Supreme Court in paras 125 & 126 of the judgment rendered in the case of SAIL (Supra). The nature of job admittedly was in the prohibited category of work as per the notification of the appropriate government dated 1st February, 1975 under the Act of 1970 and the arrangement entered into through contractor for execution of the perennial nature of job in underground mines by the management was found to be a sham and a camouflage by the Industrial Tribunal. It was also in consonance with the conscious decision of the management itself as indicated hereinabove through circular dated 8th/9th May, 1986. Therefore the workmen under the reference were rightly entitled

for regularization. In such circumstances, the judgment relied upon by the respondents in Civil Appeal no. 396 of 2006 in similar circumstances, in the case of workmen of Bhagaband Colliery under the same management of BCCL is wholly applicable to the facts of the present case where also a similar reference had been made to the Industrial Tribunal. The judgment rendered by the Division Bench of this Court in L.P.A. No. 426 of 2010 on similar reference made before the learned Central Government Industrial Tribunal No. 1 Dhanbad vide order dated 3rd August, 1994 in a matter relating to departmentalizing/regularizing of 25 workmen in the management of M/s. BCCL is also in support of the respondents workmen. In the said case also the concerned workmen were employed through contractor for the job of drivage in stone, stone cutting, drivage through fault in stone, coal cutting, dressing in coal and stone, reef supporting, line packing, fall clearing and other tyndale jobs, which was also perennial in nature and in the prohibited category of jobs under the provisions of Act of 1970. The award of the learned Tribunal in similar circumstances was upheld by learned Division Bench of this Court while also relying upon the judgment rendered by Apex court in Civil Appeal No. 3962 of 2006 vide judgment dated 18th November, 2009.

21. In such circumstances, the first ground raised by the petitioner Management to challenge the impugned award, is not tenable on facts and in law. The learned tribunal had consciously after appreciation of evidence come to a definite finding that these workmen were engaged for more than 190 days in a permanent nature of job which was in the prohibited category. The learned Tribunal as observed hereinabove found that the engagement through the contractor was a camouflage for execution of such prohibited nature of job of permanent nature. In such circumstances, given the decision of the management itself to absorb such underground contractors'' workmen who had worked for more than 190 days in prohibited category of job, the learned tribunal was fully justified in directing regularization/departmentalization of these workmen in the employment of the management. Therefore, the judgments relied upon by the petitioner management do not come to their aid. The learned tribunal came to a definite finding on the basis of materials adduced before it that the said arrangement was a sham and a camouflage, in line with the ratio laid down by Hon''ble Supreme Court in the Constitution Bench rendered in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., by the impugned Award delivered on 14th August, 1992 i.e. much before the said judgment was delivered. In such circumstances the award rendered by learned tribunal cannot be said to be in derogation of the ratio laid down by the judgment in the case of SAIL (Supra) by the Apex court. The judgments relied on this point by learned counsel for the petitioner management is distinguishable on facts. It is not a case of termination of an employee u/s 25(F) of I.D. Act in which situation, it has been held by Hon''ble Supreme Court in a number of judgments that automatic reinstatement is not the Rule.

22. So far as last issue raised by learned counsel for the petitioner on the basis of findings rendered in Miscellaneous Case no. 1/98 by learned Tribunal vide order dated 7th September, 1988 is concerned, the contention of the respondents workmen is not without substance so far as identification of 36 workmen out of 52 workmen covered under the reference is concerned. The period in question where said 52 workmen were engaged through the contractor, Jogeshwar Singh in Bhagaband Colliery in question was between 1983 to 1986. The reference itself was made on 8th May, 1988 and the award was rendered on 14th August 1992. During the proceedings in the present writ application being CWJC No. 1140 of 1994 (P), where the award in question was under challenge by the petitioner management, upon a direction passed by this Court on 20th April, 1998, the said exercise to identify the 52 workmen for the purposes of grant of 17(B) wages, the exercise was conducted in Miscellaneous Case no. 1/98 by learned tribunal Dhanbad. Therefore, due to such a long gap of time from the date when these workmen were engaged as also the date of award, as also the fact that these workmen were poor illiterate workmen engaged as daily wager in the colliery in question at the relevant point of time, some of them might have justifiably left in search of suitable work for seeking source of livelihood to other places. These workmen therefore may not have appeared during the course of miscellaneous proceeding undertaken on the direction of this Court in the year 1998 by the Central Government Industrial Tribunal. However, out of the said 52 workmen, 41 had appeared out of which 36 had been identified by learned Tribunal being the beneficiaries of the impugned award in question. In such circumstances, non appearance of the other workmen or the identification of only 36 workmen out of 52 covered under the award, cannot be made a ground to deny the rightful claim to these 36 workmen who were identified by the learned tribunal for the purposes of benefits of 17(B) wages under the award in question. In the facts and circumstances of the case and taking into account the fact that the award having been rendered in 1992 and the 36 workmen having been identified in conscious exercise conducted under Miscellaneous Case no. 1/98 by learned tribunal, it would be just and proper that benefits of award be conferred to these 36 workmen, who have been so identified by learned tribunal under direction of the court in the year 1989 as covered under the impugned award dated 14th August, 1992 in question. This is all the more justified for the reason that after such a long lapse of time from the delivery of the impugned Award on 14th May 1992, and that too when only 36 workmen had been identified in the year 1998, any such exercise to identify the remaining workmen would give rise to several fictitious claims and unnecessary litigations on this score. In such circumstances as discussed hereinabove, therefore the impugned award is modified to the aforesaid extent. However, the main ground of challenge raised by the petitioner fails on account of facts and reasons discussed hereinabove in detail. In such circumstances, the writ petition CWJC No. 1140 of 1994 (P) is disposed of with the aforesaid modification in the impugned Award dated 14th August, 1992. For the same reasons, no interference is required in the order dated 07.09.1998 passed in Misc. Case No. 01 of

1998 by the Central Government Industrial Tribunal No. 2, Dhanbad. Accordingly, the writ petition CWJC No. 3109 of 1998 (P) is also disposed of in the aforesaid manner. However, there shall be no order as to cost (s).