
**Employers in relation to the Management of Bastacolla Area No. IX of
Bharat Coking Coal Limited Vs Their workmen**

W.P. (L) No. 4903 of 2006

Court: Jharkhand High Court

Date of Decision: Feb. 13, 2014

Acts Referred:

Companies Act, 1956 " Section 617#Constitution of India, 1950 " Article 12, 226#Contract Labour (Regulation and Abolition) Act, 1970 " Section 2 (c)#Industrial Disputes Act, 1947 " Section 2(k)

Citation: (2014) 3 AJR 736 : (2014) 143 FLR 657 : (2014) 4 JLJR 385

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Anoop Kumar Mehta, Advocate for the Appellant; Atanu Banerjee, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Narendra Nath Tiwari, J.

In this writ petition, the petitioner has prayed for quashing the Award dated 5.4.2006 rendered by the Central

Government Industrial Tribunal No. 1, Dhanbad in Ref. No. 119 of 1997 (Annexure-4)_ whereby, learned Tribunal has answered the reference

and hold that Jaldhar Bhuiya and 131 others were engaged as coal loaders for truck loading job by the Management of Bastacolla Area No. IX of

M/s. BCCL is correct and justified and that they are entitled for regularization as piece rated workers on the job of loading of coal in truck or

wagons. Learned Tribunal has further directed to regularize the concerned workmen as piece rated workers.

2. According to the petitioner, they have their own permanent wagon loaders. But coal is also sold locally under various coal sales schemes and in

the process of such local sale, the purchasers lift coal from the coal depot and get the same loaded in their own truck/wagon by the persons

engaged by them. The coal purchasers commonly known as D.O. Holders engage their own men for loading of coal and they directly make

payment of remuneration to such loaders. The workers brought for that purpose leave the depot along with the truck and D.O. Holders. The

persons who are engaged by D.O. Holders and work on their instruction and supervision have no concern with the petitioner. The concerned

workmen were the persons engaged by D.O. Holders. They were engaged by the D.O. Holders and worked under their control and supervision.

There is no relationship of employer and employee between the Management and the concerned workmen. They are strangers to the petitioner.

They were not issued any identity card, CMPF number or any letter of engagement. The purchasers/D.O. Holders are not contractors within the

meaning of section 2 (c) of the Contract Labour (Regulation & Abolition) Act, 1970. The respondent-Union, however, in order to induct

stranger/outsider, started making false and baseless claims asking petitioner company to regularize the concerned workmen. The petitioner is a

Government Company within the meaning of section 617 of the Companies Act and "State" under Article 12 of the Constitution of India and are

governed by the prescribed provisions and procedure of law. Jaldhar Bhuiya and 131 others were complete strangers and there was never any

relationship of employer and employee, they deliberately raised an industrial dispute before the Assistant Labour Commissioner (C), Dhanbad.

Notice was issued to the petitioner-Management to appear for conciliation. The Management appeared and put its objection stating, inter alia, that

the concerned workmen were strangers and the dispute said to be raised by them is not an industrial dispute within the meaning of section 2(k) of

the Industrial Disputes Act. The concerned workmen are also not the members of the Union and the Union has no locus standi to raise the

dispute/claim for their regularization. Since the claim was deliberately made by the Union regarding strangers, there was no point to be conciliated.

Ultimately conciliation failed and a failure report was submitted to the appropriate Government. The appropriate Government by its order dated

26.5.1997 referred the dispute for adjudication to the Central Government, Industrial Tribunal, Dhanbad for adjudication with following reference.

Whether the claim of the Union that Sri Jaldhar Bhuiya and 131 others (as per list enclosed) were engaged as Coal Loaders for truck loading job

by the management of Bastacolla Area No. IX of M/s. BCCL is correct and justified? If so, whether the demand for regularization of these

workmen by the Union is legal and justified? And if so, what relief are these workmen entitled to?

3. Learned Tribunal issued notice to the parties and on receipt thereof, the Management as well as the concerned workmen appeared and filed

their respective written statements.

4. The Management in their written statement inter alia stated that they being State within the meaning of Article 12 is required to follow the

procedure of public employment, which, inter alia, has to invite application through advertisement or through employment exchange and to

complete the selection process in accordance with law and then to make appointment against available sanctioned post. The concerned workmen

were never appointed by the Management. Even they also not claimed that they were appointed by the Management and/or their engagement was

against any sanctioned post. The Management refuted the claim and contested the reference and prayed for answering the reference in negative.

The Management also raised preliminary objection regarding maintainability of the reference.

5. The respondent-Union on behalf of the concerned workmen in their written statement, inter alia, stated that they have been working continuously

as coal loaders at Chandmari Dobari and Bera Colliery of Bastacolla Area No. IX of M/s. BCCL since 1989. They have completed more than

240 days in a year for a substantial period and are eligible for regularization. It was further stated that the concerned workmen were under control

and supervision of the Management and there was relationship of employer and employee between them.

6. The concerned workmen examined on witness as WW-1 and produced wage sheet which was marked as Ext-W-1.

7. The Management-petitioner on the other hand examined one Janakdhari Ram as (MW-1)-an official, posted at that place during the relevant

period. He stated that there was absolutely no relationship of employer and employee between the concerned workmen and Management. They

were engaged by the D.O. Holders. There was never any control and supervision of the Management over them. The employees under the

Management are given appointment letters, identity cards, computer generated pay slips, CMPF number. Names of the employees are recorded in

statutory form B-Register and excerpts are also issued to the employees but the names of the concerned workmen nowhere appear in the said

record.

8. Learned Tribunal answered the reference in favour of the concerned workmen holding, inter alia, that their claim is correct and demand is

justified and they are entitled for regularization as piece rated workers in the job of loading of coal in trucks or wagons. Learned Tribunal further

directed the Management to regularize the concerned persons as piece rated workers without ascertaining as to whether they have been working

against any sanctioned vacant post or the number of posts required are vacant.

9. The award has been challenged in the writ petition on several grounds.

10. Mr. A.K. Mehta, learned counsel appearing on behalf of the Management-petitioner, submitted that the Management being a Government

Company has to follow the prescribed rule in the matter of appointment/employment and those appointments can be made on fulfilling the said legal

requirement. Even for the sake of argument, it is accepted that the concerned workmen were daily wagers. They have no right to the post and they

cannot be regularized unless there is any such rule and the required number of posts are created or sanctioned. Learned counsel referred to and

relied upon the decision of the Supreme Court in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., .

He contended that such direction for regularization cannot be issued by the court or tribunal even if the workmen is said to be engaged as daily

wagers. There is no vested right even to such workmen to be regularized in service. Learned counsel referred the decision of the Apex Court in

State of Uttaranchal and Another Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad, to fortify his submission. Learned counsel

submitted that the impugned Award directing regularization of the concerned workmen is not only in contravention of the settled principles of law,

the same is also beyond the terms of the reference and is wholly without jurisdiction. The award is unsustainable and is liable to be quashed.

11. Opposing the writ petition, Mr. Atanu Banerjee, learned counsel appearing on behalf of the respondent-workmen, submitted that the

contention of the Management is wholly misconceived, contrary to the established facts and principles of law. The award of the learned Tribunal is

fully supported by the facts and evidences on record and it is well within the ambit of reference. There is no illegality or infirmity in the Award. The

findings recorded by the learned Tribunal on the basis of appraisal of the facts and evidence do not warrant any interference by this Court, in

exercise of the writ jurisdiction. Learned. Tribunal on appraisal of the evidences and materials on record has held that the concerned workmen

have been working continuously as loaders of coal in trucks/wagons. They have been rendering services for the benefit of the Management. It has

been admitted by the Management that they sell coal to the purchasers, which is being transported through trucks or wagons. If the trucks and

wagons are not loaded by the concerned workmen, the Management cannot be able to sell and transport the coal to different destinations. The

work of loading is being performed by the concerned workmen under the control and supervision of the Management and also for their benefit.

The person who benefits the Management by rendering his services becomes employee of the said management. In that context, he referred the

decision of the Supreme Court rendered in the case of Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another, .

12. Learned counsel submitted that learned court below thoroughly discussed the facts and evidences of the parties including the wage sheets (Ext-

W-1) and on due consideration thereof has rightly come to the conclusion that the concerned workmen were engaged as coal loaders for truck

loading job by the Management of Bastacolla Area No. IX of M/s. BCCL and the demand of the concerned workmen for regularization is legal

and justified and that they are entitled for regularization as piece rated workers on the same job of loading of coal in trucks or wagons.

13. Learned counsel submitted that the Management has never disputed that there is no vacant sanctioned vacant post for regularising the

workmen. There was thus no occasion for the Tribunal for ascertaining the same or for recording any such finding. Learned Tribunal has held that

the concerned workmen had been continuously working since long. That goes to suggest that the Management required the work force for

performing the said job and the job is of permanent and perennial nature. There is no error in the award and direction for regularizing the

concerned workmen. Learned counsel submitted that even if there is no sanctioned post, the workers, who have been working since long, are

entitled to be regularized. Learned counsel placed his reliance on the decision of the Hon"ble Supreme Court in Raj Narain Prasad and Others Vs.

State of U.P. and Others, and Hindustan Machine Tools and Others Vs. M. Rangareddy and Others, .

14. Learned counsel contended that the Tribunal has come to the finding after due scrutiny and assessment of facts and evidences on record, and

the finding of fact based on evidence does not warrant any interference by this Court in exercise of jurisdiction under Article 226 of the

Constitution of India. Reliance has been placed on the decision of the Supreme Court in G.M. ONGC, Shilchar Vs. ONGC Contractual Workers

Union, .

15. I have heard learned counsel for the parties and considered the facts, evidences and materials on record. On perusal of the impugned Award, I

find that the learned Tribunal has thoroughly discussed the facts and evidences on record and has come to the finding that the sponsoring Union has

been able to prove that the concerned workmen are continuously working and performing the job of loading of coal in trucks or wagons since

long. Learned Tribunal has considered Ext-W-1-Wage Sheet and observed that no evidence has been brought by the Management to rebuttal the

said document. In course of cross-examination of workmen witness W W 1, the Management tried to indict the genuineness and validity of the

wagesheets (Ext. W-1) put objection in admitting the document in evidence. In view of the said objection, the sponsoring Union had filed an

application calling for the original attendance register, muster roll cum wage sheet from 1989 till date from the management and the learned

Tribunal on that application had directed the Management to produce those documents. But the Management did not produce those documents.

Adverse inference was, thus, drawn by learned Tribunal observing that it will be presumed that had those documents been produced, the same

would have supported the claim of the concerned workmen. On that basis, the conclusion was drawn and findings were recorded that the

concerned workmen were engaged as coal loaders for truck loading job by the Management of Bastacolla Area No. IX of M/s. BCCL and their

demand for regularization is legal and justified and they are entitled for regularisation as piece rated workers on the job of loading of coal in

trucks/wagons. The said finding of learned Tribunal being based on the discussion and consideration of the facts, evidence and materials on record

and is supported by reasons, I find no infirmity in the said finding.

16. However, I find that no finding has been recorded regarding the availability of vacancy and posts, equal to the number of the concerned

workmen. Neither there is any such terms in the reference regarding issuance of direction for regularizing the concerned workmen. Learned

Tribunal has directed for regularization of the concerned workmen without taking consideration of the said aspect.

17. Mr. Banerjee, learned counsel, submitted that the piece rated workmen are paid on the basis of the volume of work and they do not work

against any sanctioned post. The purport of the Award as such is for directing the Management to maintain the names of concerned person on

permanent roll of piece rated workmen. He further submitted that the said part of direction is consequential in nature and no separate and specific

reference was required for the same. Once it was held that the concerned workmen were entitled for regularization as piece rated workers, the

same consequence is to follow. There is thus no illegality in the said direction. Further in the said reference, it was also mentioned that if the

demand of regularisation of these workmen is legal and justified, what other reliefs, the workmen are entitled to. That part of award is thus well

within the ambit of the reference and is not beyond the terms of the reference.

18. Though, the said contention of learned counsel appears to be appreciable, nothing has been brought before this Court to show that in the

matter of piece rated workmen, direction for regularisation of the workmen can be issued without ascertaining vacancy and number of sanctioned

post. When the matter of regularization is to be dealt with and any such direction is issued, it is imperative on the part of the Court or Tribunal to

ascertain as to whether there are sanctioned posts and vacancy for regularization as many persons and there is any such scheme for regularisation,

under which, the person concerned is entitled for regularisation, even in absence of any such vacancy if the concerned person/workman is/or found

entitled for regularisation.

19. In view of the above discussion, though I find no ground for interfering with the other part of the award, the last part issuing direction to the

Management to regularise the concerned person as piece rated workmen requires interference and modification.

20. Accordingly, this writ petition is disposed of confirming the Award except the last part thereof whereby the Management has been directed to

regularise the concerned person as piece rated workmen. The Award is modified to that extent and the Management is directed to maintain the

concerned workmen on their permanent roll of piece rated worker and treat them as piece rated workers as per the terms of NCWA and pay the

prescribed wages accordingly. Their regularization shall be subject to availability of the post and vacancy and as per the scheme, by relaxing the

age bar and minimum qualification, as the case may be.

21. There is no order as to cost.