(2010) 03 MP CK 0043

Madhya Pradesh High Court

Case No: None

Atofina Catalyst (India) Limited and Another		APPELLANT
	Vs	
Yadav Prasad		RESPONDENT

Date of Decision: March 9, 2010

Acts Referred:

- Madhya Pradesh Industrial Relations Act, 1960 - Section 31(3)

Citation: (2010) 2 LLJ 574

Hon'ble Judges: Viney Mittal, J; Prakash Shrivastava, J

Bench: Division Bench

Judgement

Viney Mittal, J.

This order shall dispose of seven, writ petitions, being W.P. No. 77541 of 2009(s), W.P. No. 7756/2009(s), W.P. No. 7757/2009(s), W.P. No. 7761/2009(s), W.P. No. 7762/2009(s), W.P. No. 7763/2009(s) and W.P. No. 7695/2009(s), as a common order dated September 11, 2009 passed by the Industrial Court is subject matter of challenge by the petitioners in all these petitions. For the. sake of convenience, the main order is being passed in W.P. No. 7695/2009(s).

2. The respondents in the writ petitions, namely Yadav Prasad, Mohan Jal, Bahadur Singh, ''Virendra Singh, Siddhulal, Gajendra Singh and Narain Singh, were engaged by petitioner No. 2-Nagi Contractor to work in the Factory of Atofina Catalyst (India) Ltd. (petitioner No. 1) in its manufacturing unit of chloride powder. It is not a matter of any dispute that the aforesaid industrial unit has employed more than one hundred employees.

3. The aforesaid workmen had approached the Labour Court under the provisions of M.P. Industrial Relations Act, 1960 (hereinafter referred to as the Act), claiming that although they were engaged by the contractor, but in essence, were working with the industrial unit run by petitioner No. 1-company and therefore, were entitled to

equal pay for equal work, which the industrial unit was paying to its regular/permanent employees.

4. The Labour Court, vide order dated April 20, 2009, held that all the applicants were the employees of the non-applicant No. 2 (contractor), but their principal employer is non-applicant No. 1 (industrial unit). However, it was noticed by the Labour Court that only 29 posts of permanent helpers were available in the hammering department and there was no vacancy in the said department. Relying upon a decision of the Supreme Court in the case of N.T.P.C. and Others Vs. Badri Singh Thakur and Others, , it was held that the applicants could not rely upon the provisions of Section 2(13) of the M.P. Industrial Relations Act for claiming that they are the employees of the non-applicant No. 1-contractor since they being contractual employees, were governed by the provisions of Contract Labour (Regulation & Abolition) Act, 1970. Consequently, the applications filed by the applicants were dismissed by the Labour Court.

5. The workmen filed appeals before the Industrial Court. The order passed by the Labour Court was challenged. The Industrial Court, re-examined the entire matter and also considered the statutory provisions and the law on the point. The following findings of fact have been recorded by the Industrial Court, after examining the entire material.

19. From the forgoing discussion it follows that the employees engaged by the contractor for the work of the principal employer cannot now be held to be the employees of the principal employer as the definition of "employees" in Section 2(13) of the Act to that extent stands superseded by the provisions of Act. of 1970 as held by the Supreme Court in NTPC v. Badri Singh Thakur (supra). The employees appointed by the contractor for the work of the principal employer are entitled to the same wages and conditions of service if they are doing the "same kind of work" as the employees engaged by the principal employer are doing. The principle of ''equal pay for equal work'' to some extent has been incorporated in the statutory provisions discussed above so that there is no exploitation of the contract labour.

It is thus apparent that after coming to a finding of fact that the applicants could not be treated to be the employees of the principal employer, as per the definition of the employee u/s 2(13) of the Act, because of the provisions of Contract Labour Act, the Industrial Court has however proceeded further to grant the relief to the employees, and has held that they are entitled to the same wages and conditions of service, as the permanent employees of the principal employer, since they were also engaged for the work of the principal employer. Consequently, the order of Labour Court has been set aside and the applications filed by the, applicants have been allowed to the extent that "they will be entitled to the same by wages, which the helpers employed non-applicant No. 1 directly in hammering department, are getting. They will also be entitled to the other conditions of service which the helpers of non-applicant No, 1, directly employed in hammering department, are

getting". The non-applicants have been held jointly and severely liable to pay the wages and extend the benefit of other conditions of service to the applicant-workmen.

The aforesaid order dated September 11, 2009 passed by the Industrial Court has been appended as Annexure P-8 with the petition and a subject matter of challenge in all these writ petitions.

6. We have heard Shri G.M. Chaphekar, learned senior counsel appearing for the petitioners and Shri B.L. Nagar, learned counsel appearing for the respondent-workmen in all these cases, and with their assistance, have also gone through the record of the case.

7. Shri G.M. Chaphekar, learned senior counsel for the petitioners has placed strong reliance upon the findings of fact recorded by the Industrial Court and points out that once it has been found itself by the Industrial Court that the respondent-workmen were not to be treated as employees of the industrial unit of petitioner No. 1, then by any stretch of imagination, the liability to pay the wages and other benefits of the said work could not be fastened upon the 1 said company. With regard to the relief granted against petitioner No. 1 (contractor), it has been, argued by the learned senior counsel that the matter of employment of the workmen by the contractor was in. the realm of contract and as such, if there was any violation of the terms and conditions of the contract, then the only remedy available to an aggrieved workman was to approach the Competent Authority, under the provisions of the Contract. Labour Regulation and Abolition Act 1970. Shri Chaphekar also points out that since the engagement, by the contractor of the workmen could not he treated to be an engagement by a Scheduled Industry, under the provisions of the M.P. Industrial Relations Act, therefore, the Labour Courts under the provisions of the said Act had* absolutely no jurisdiction to entertain the applications filed by the workmen.

8. On the other hand, Shri B.L. Nagar, learned counsel for the respondent-workmen has defended the order passed by the Industrial * Court. According to Shri Nagar, even if it be treated that the workmen were only the employees of the contractor, and were not the employees of the principal employer, still since the contractor engaged more than one hundred employees, for rendering, service to the industrial unit of petitioner No. 1, therefore, the provisions of the Act would be attracted.

We have given our thoughtful consideration to the rival contentions raised by learned counsel for the parties. We have also perused the findings of fact recorded by the two Courts below.

9. As noticed above, it has been round as a fact even by the Industrial Court that the employees engaged by the contractor for the work of the principal employer are not to be treated as the employees of the principal employer, as per the definition of the employee u/s 2(13) of the M.P. Industrial Relations Act, In view of the aforesaid

finding of fact, it is clear that by any stretch of imagination, the liability towards the applicant-workmen cannot be fastened upon the company. Although Shri Nagar has tried to defend the jurisdiction of the Labour Court, by referring to the number of employees engaged by the contractor, but on a query put by the Court, as to whether the engagement by the contractor; being not covered under the schedule attached to the: M.P. Industrial Relations Act, 1960, how the applications filed by the workmen could be entertained by the Labour Court, the learned counsel has not been able to, satisfy us that the provisions of the said Act are attracted, in any manner.

10. In these circumstances, we have no hesitation in holding that the provisions of the M.P. Industrial Relations Act were not attracted to the controversy in question, since the respondent-workmen could not be treated to be the employees of the principal employer nor their engagement by the contractor could make them employees of a Scheduled Industry. Thus, obviously, the provisions of the Act were not attracted to the situation, and as such, the applications filed by the workmen u/s 31(3) of the said Act were also not maintainable.

11. In view of the aforesaid discussion, all the writ petitions are allowed and the order dated September 11, 2009, Annexure P-8, passed by the Industrial Court is set-aside. As a result thereof, the applications filed by the respondent-workmen before the Labour Court, u/s 31(3) of the MP. Industrial Relations Act are dismissed as not maintainable.

12. However, the respondent workmen are granted a liberty to seek their appropriate remedy under the provisions or Contract Labour (Regulation and Abolition) Act, 1970, if they have any grievance against their employer.