

(2008) 07 CAL CK 0046

Calcutta High Court

Case No: F.M.A. No. 2714 of 2007

Eastern Coal Fields Limited

APPELLANT

Vs

Central Government Industrial
Tribunal and Others

RESPONDENT

Date of Decision: July 22, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10
- Industrial Disputes Act, 1947 - Section 25B, 25D

Citation: (2008) 4 CALLT 42 : (2008) 4 CHN 640 : (2008) 118 FLR 1176

Hon'ble Judges: Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: R.N. Majumder and S. Sil, for the Appellant; Bhudeb Chatterjee and Sanjib Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

Facts:

Dispute relates to absorption of 14 mazdoors working in Shyamsunderpur Colliery belonging to Eastern Coalfields Limited, the appellant above named. Out of 14 mazdoors 12 were female being the respondent Nos. 4 to 15, They were widows of their respective husbands who died in harness while working in the said colliery as regular worker under the appellant. The respondent Nos. 16 and 17 are the sons of their respective fathers who also died in harness while working in the said colliery. Under the conditions of service they were entitled to be considered for compassionate appointment in place of the concerned deceased employee. In 1976 they were taken by the colliery as Clay Cartridge maker. Since then they were working as such. They raised an industrial dispute through Colliery Mazdoor Union a

registered trade union under the affiliation of INTUC. Accordingly, the Central Government passed an order of reference as appears from page 73-74 of the Paper Book referring the following disputes:

Whether the demand of the workmen of Shyamsunderpur Colliery, Bankola Area, ECL, P.O. Ukhra, Dist. Burdwan that the management should treat S/Shrimati Jhuni Mallick, Muteswar Kohar, Subiran Bibi, Dharmi Ahir, Sudia Kole, Jamuni Das, Dalmuni Harijan, Sumeswat Rajbhar, Puleswari Harijan. Parbati Mondal, Pramila Mali, Surijs Das, Shri Ram Lakhan Dusad and Shri Seopujan used clay cartridge makers as their workmen from the date of their appointments and that they should be paid Category-I wages along with all benefits available to colliery workman is justified? If so, to what relief are the said workmen entitled?

2. The Tribunal after examining the evidence adduced before it both by the workmen as well as the management, published its award directing regularisation of the respondent Nos. 4 to 17.

3. Being aggrieved and dissatisfied with the said award the coal company the appellant abovenamed filed a writ petition before this Court being C.R. No. 3330(W) of 1990. The learned single Judge by His well reasoned judgment and order dated November 20, 2001 dismissed the writ petition and affirmed the award. Hence, this appeal by the coal company - appellant.

4. Contention of the Appellant: Mr. R.N. Majumder, learned Counsel appearing in support of the appellant contended as follows:

(i) The private respondents were suppliers of clay cartridge. They submitted quotations in terms of an invitation of tender. They were accordingly paid on the basis of the products they supplied. Hence, they could not be absorbed as regular worker in the company's pay roll.

(ii) They were not appointed in a regular post. Hence, they could not be absorbed in view of the recent decision of the Apex Court in the case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), .

(iii) The learned Tribunal as well as the learned single Judge erred in holding that they were discharging identical work with the regular mazdoor in category-I working in the colliery without any supportive evidence.

(iv) The private respondents were neither temporary workers nor engaged by any contractor. Hence, question of their regularisation either u/s 10 of the Contract Labour Abolition Act, 1970 or otherwise could not arise.

5. In support of his contention Mr. Majumder relied on the following decisions apart from Uma Devi-3 (supra):

(i) [U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others](#),

(ii) [Municipal Corporation, Jabalpur Vs. Om Prakash Dubey,](#)

(iii) [S.C. Chandra and Others Vs. State of Jharkhand and Others,](#)

(iv) Unreported decision of the Division Bench in the case of Zonal Manager, Bank of India and Anr. v. Md. Mamtaj Hussain and Ors. FMA No. 272 of 2003 dated March 12, 2008.

6. Contention of the Respondents: Opposing the appeal Mr. Bhudeb Chatterjee, learned Counsel appearing for the private respondents contended as follows:

(i) It came out in evidence that out of 14 private respondents 12 were widows of their respective husbands who died in harness whereas the other two male respondents were the sons of their respective fathers who also died in harness. Hence, they were entitled to be considered for compassionate appointment.

(ii) Instead of giving compassionate appointment they were absorbed as clay cartridge maker and since then they were working as such.

(iii) Assuming their appointments were irregular the appellant did not take any defence against such alleged irregular appointment.

(iv) It came out in evidence that in Serial 26, Category-I regular mazdoors were described as clay cartridge makers. They were transferred to different departments to accommodate the private respondents. Hence, the private respondents were entitled to be absorbed in Serial-6, Category-I.

(v) It came out in evidence that the private respondents were duly getting their ration articles from the company's ration shop. They were also allowed to stay in company's quarters. They were given other benefits like electricity, water etc. Hence, the plea that they were mere suppliers of clay cartridge, could not be established.

(vi) Two similarly circumstanced workers were duly absorbed as regular employee to the exclusion of 14 private respondents. No explanation was offered as to how those two were absorbed in the regular pay roll of the company.

(vii) The appellant failed to disclose as to whether the alleged identical process of supply of clay cartridge was prevalent in any other colliery belonging to the appellant.

(viii) The tender papers so disclosed by the appellant relate to a particular year being 1977. Those were nothing but fabricated documents to deny the regular employment to the private respondent.

(ix) The private respondents were entitled to ventilate their grievance as they were entitled to take the benefit of Section 25B and D of the Industrial Disputes Act, 1947.

7. In support of his contention Mr. Chatterjee relied on the following decisions:

- (i) [Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,](#)
)
- (ii) [U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others,](#))
- (iii) 2007 3 WBLR 295 (Dwijendra Nath Singha and Ors. v. State of West Bengal and Ors.)
- (iv) [West Bengal Registration Copywriters" Association Vs. State of West Bengal Service and Others,](#))

8. Analysis of the Awards on the factual score came through evidence:

- (i) Prior to 1978 the concerned workmen used to get their payment of wages directly through pay sheet individually by giving thumb impression. After 1978 payment through voucher was introduced for sometime. Again the system of payment through pay sheet was introduced.
- (ii) As per work schedule clay cartridge makers were described as category-1 workers. Hence, the concerned workmen were discharging perennial duty as clay cartridge makers.
- (iii) There was an intermediary between the management and the workmen. The concerned workmen supplied clay cartridge only to Shyamsunder Colliery. Payments were made by the colliery directly to the concerned workmen once in a month. The raw materials like clay, water, sand etc. required for manufacture of clay cartridge were supplied by the colliery. Manufacture of the product was being supervised by the colliery officials. They used to assess the daily requirement and accordingly instructed the concerned workmen to supply the same.
- (iv) Colliery provided place within the colliery for manufacture of clay cartridge. They also provided store room for storing the products.
- (v) The concerned workmen were allowed to stay in the colliery quarter or huts constructed by them with the materials supplied by the colliery.
- (vi) The concerned workmen were also required to dry and store the product and they were also entrusted the job of loading and unloading. They used to load clay cartridges in basket and unload the same in colliery as per daily requirement.
- (vii) In respect of 1977 the management could produce papers regarding invitation of quotations from the suppliers for supply of clay cartridges and those were purchased at the approved rate. The management, however, could not produce identical documents for the subsequent years. They also could not explain as to how the alleged system of invitation of quotation and purchase of clay cartridges were being conducted in respect of the subsequent years.
- (viii) The concerned workmen were members of INTUC Union. They also disclosed membership subscription receipts. The Vice-President of the union also

corroborated such fact in evidence.

(ix) The concerned workmen were drawing their ration articles from the colliery ration shop after obtaining ration card from the colliery. They used to get free coal and free electricity for their personal use.

9. Analysis of the finding in the award:

(i) The relevant factors namely employer's power of selection and dismissal, right of control and supervising the method of doing work, the nature and place of work, the economic control and all other relevant circumstances have to be kept in mind.

(ii) The authority could disclose documents relating to tender process conducted in the year 1977 in respect of 10 out of 14 concerned workmen. The note sheet also disclosed that 12 persons submitted their quotations. The management, however, could not offer any explanation how the others were involved in making the clay cartridges. In any event the concerned workmen denied their thumb impression on tile tender documents produced by the management.

(iii) The concerned workmen were illiterate and on what paper the management took their thumb impression were not known to them.

(iv) It is true that there had been an increase of rate in 1980 as per the request made by the concerned workmen. However, the story of inviting quotations for the subsequent years could not be proved through any documentary evidence. Similarly, the authority also could not offer any plausible explanation about the alleged working arrangement prior to 1977.

(v) The facts conclusively show that the concerned workmen were under the control, both administrative and economic, of the colliery.

(vi) The work done by the workmen was integral part of the industry. Raw material was supplied by the management. Manufacture was done within the factory premises. Equipments of the colliery were used for manufacture. The finished product was consumed by the management for their own use. Hence, all the factors required to be decided for establishing the masters-servant relationship have been fulfilled.

(vii) Why and how the employer could employ two other persons in 1986 from outside without employing any of the 14 workmen was not adequately explained by the colliery.

(viii) The Tribunal held that the concerned workmen must be treated as workmen of the management and they should be given identical pecuniary benefit and other service benefit at par with the clay cartridge makers who were appointed and admitted in regular pay roll. The Tribunal directed such benefit to be extended with effect from June 30, 1984 being the date of reference.

10. The judgment and order of the learned single Judge upholding the award: The learned single Judge discussed the relevant findings of the Tribunal. The learned single Judge held that the concerned union had locus standi to represent the workmen in concerned industrial dispute raised before the Tribunal. The learned single Judge also held that master-servant relationship existed between the management and the said workmen. The learned single Judge heavily relied on the Apex Court decisions in the case of G.B. Pant University of Agriculture and Technical, Pant Nagar, Nainital v. State of Uttar Pradesh reported in 2000 8 SCC 109 and Secretary, [A. Janardhana Vs. Union of India \(UOI\) and Others](#), . His Lordship ultimately held that since the workmen concerned uninterruptedly worked for more 240 days in a year they would be entitled to be considered for regularisation. The learned Judge ultimately dismissed the writ petition.

11. Our view: At the time of initial entry the concerned workmen were entitled to be considered for regular appointment in compassionate category as per the service rules. They were, however, engaged as clay cartridge maker without absorbing them in regular pay roll. Hence, they had a reasonable expectation that they would be absorbed in due course. It was not done. Hence they raised an industrial dispute through the recognised union. The Tribunal being a fact finding body examined the evidence and came to an ultimate finding that they were entitled to be absorbed in regular pay roll.

12. On analysis of evidence as done by the Tribunal in the award we find that the concerned workmen were discharging perennial duty. As per the work A schedule item No. 26 category-1 mazdoors were entrusted to make, clay cartridges required for blasting of coal. At the time of induction of the concerned workmen the existing workers discharging identical duty were shifted to other departments. It also came out in evidence that two clay cartridge makers were absorbed as regular worker subsequently. The management could not give any satisfactory explanation as to how they were absorbed. On a sum total it appears to us that the control and supervision of making of the clay cartridges were exclusively in the hand of the management. We also find that the concerned workmen were given benefit of staff quarter, electricity, ration etc. like regular workers.

13. Let us now examine the case of the management. With regard to invitation of tender the management could disclose documents pertaining to invitation of tender in respect of 10 workmen out of 14 that too only for the year 1977. The management also could not offer any plausible explanation by adducing documentary evidence as to the process of invitation of tender for the subsequent years. The union raised a plea that the concerned workmen were illiterate and it was not possible for them to know in which paper they were putting their thumb impression. It also came out in evidence that the witness also denied her thumb impression. There was no attempt on the part of the management to produce any contrary evidence to dispel such deposition. Hence, on facts we do not find any

reason to interfere with the award.

14. Let us now consider the law on the subject. Much reliance was placed on Secretary, State of Karnataka (supra). If we look back we would find that prior to 2001 it was the consistent view of the Apex Court that the temporary workers discharging perennial duty and working for more than 240 days in a year consistently without any break were entitled to be regularised. In the case of Steel Authority of India Ltd. reported in 2001, Volume-VII, Supreme Court Cases, Page 1 the Apex Court deprecated the practice of regularisation of appointments made irregularly. The Apex Court also considered Section 10 of the Contract Labour Abolition Act. Even in the said decision the Apex Court observed that a close survey should be made to find out whether such work contract was a mere camouflage or not. In 2006 the Apex Court in the case of Secretary, State of Karnataka (supra) once again deprecated the process of regularisation of illegally and irregularly appointed temporary workers in regular government pay roll. It is well settled principle of law that a back door appointee without going through a regular recruitment process was not at all entitled to claim regularisation which would amount to denial of consideration of other eligible candidates which would violate Article 14 and 16 of the Constitution of India.

15. Let us now consider whether the award in hand, if allowed to be implemented, would go contrary to the recent views of the Apex Court. Section 25B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act of 1947") inter alia provides that when a workman is in continuous service uninterruptedly for 240 days in a year he would deem to be in continuous service under the employer and would be entitled to enjoy the benefit and/or protection guaranteed to the regular employees under the said Act of 1947. Following the concept of continuous service the Apex Court granted regularisation earlier to irregular appointees in vacant sanctioned post. In the instant case the post became vacant by transfer of the regular workers working in category-1 item 26 to other departments. The concerned workmen were taken in those vacant posts. Issue of tender and acceptance of quotation, in our view, was a mere camouflage to deny regular employment to these workmen who were otherwise entitled to be considered for regular employment in compassionate category.

16. In this regard a recent decision of the Division Bench of Our Court in the case of West Bengal Registration Copy Writers' Association (supra) may be relied upon. Under the appropriate copy writers' rules prevalent in West Bengal license are granted to the copy writer whose duty is to copy the Deed before it is presented for registration. For such copy the copy writers are entitled to charge at the prescribed rate under the rules. In case of any irregularity and/or illegal activities the appropriate authority is entitled to cancel the license. The said rules also provide for benefit of compassionate engagement in case a copy writer dies in harness. Considering all those factors the Court found that the State was having a

supervisory control over the copy writers. While distinguishing the decision of the Apex Court in the case of "Secretary, State of Karnataka the Division Bench in paragraph 22 of the said decision observed that the said decision held that unless the appointment was in terms of relevant rules through a regular recruitment process the same would not confer any right on the appointee. The Division Bench observed that copy writers were appointed following the regular rules and regular recruitment process by way of grant of license, Hence, their prayer for inclusion in the regular pay roll granting a regular scale of pay was allowed by the Division Bench.

17. Applying the ratio decided in the case of West Bengal Registration Copy Writers' Association (supra) we would find that the concerned workmen were better placed than the copy writers. Here they were absorbed in regular vacant post for clay cartridge makers in item 26 of Category-1. They were otherwise entitled to be considered for regular appointment in compassionate category. They were discharging perennial duty. They were enjoying some service benefits like regular workmen. Their work was supervised by the management. They were under the supervision and control of the management. Hence, in our view, they should be absorbed as regular worker.

18. We are of the view that the law on the subject as decided by the Apex Court as of date does not create any impediment or stand in the way of regularisation of the concerned workmen.

19. We do not find any scope of interference with the award. In our view, the learned Judge rightly declined to interfere with the same.

20. The appeal, thus, fails and is hereby dismissed.

21. There would be no order as to costs.

22. There would be stay of operation of this judgment and order for a period of two months from date.

23. Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

24. I agree.